TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 21.

JOSEPHINE H. THROCKMORTON AND LUKE DEVLIN, PLAINTIFFS IN ERROR,

vs.

WASHINGTON HOLT, WILLIAM G. STERRETT, MARGARET BOWMER, ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JULY 11, 1899.

(16,930.)

(16,930.)

SUPREME COURT OF THE UNITED STATES.

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JOSEPHINE H. THROCKMORTON AND LUKE DEVLIN, PLAINTIFFS IN ERROR,

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 14, 1899.

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In the Court of Appeals of the District of Columbia

JOSEPHINE H. THROCKMORTON *et al.*, Appellants,
vs.
WASHINGTON D. HOLT *et al.*
} No. 712.

a Supreme Court of the District of Columbia.

In re Estate of JOSEPH HOLT, Deceased. At Law. No. 39648.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition of Washington D. Holt et al. for Letters of Administration.*

Filed August 17, 1894.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. 6283.

To the honorable the justice of the supreme court of the District of Columbia, holding a special term of said court for orphans' court business:

The petition of Washington D. Holt, William G. Sterett, and John W. Holt respectfully represents—

1.

That they are citizens of the United States and residents, respectively, the said Washington D. Holt of the State of Kentucky, the said William G. Sterett of the District of Columbia, and the said John W. Holt, of Yazoo City, in the State of Mississippi.

2.

They further represent that Joseph Holt, a citizen of the United States and a resident of the city of Washington, District of Columbia, died on the 1st day of August, A. D. 1894, at his residence, in said city of Washington.

3.

That the said Joseph Holt left him surviving no widow or children or descendents of chiidren.

2 4.

That the said Joseph Holt had brothers and sisters as follows, to wit: Richard S. Holt, James J. Holt, Thomas Holt, Robert S. Holt, and Elizabeth Holt, who intermarried with William Sterett, the father of your petitioner William G. Sterett, all of whom [brothers and said sister]* died before the death of said decedent, Joseph Holt.

4.

That the said Richard S. Holt and James J. Holt died unmarried and without issue; that the said Thomas Holt left [no widow]* a widow, who has since died, him surviving ʌ and that your petitioner Washington D. Holt is his son and sole heir-at-law; that the said Robert Holt left him surviving (and who are still living) his widow, Ann Holt, and the following-named children, to wit, Sarah, John W., Lockie, Robert, Thomas, and James Holt, all of whom are of full age and non-residents of the District of Columbia, and that the said Robert had one son, who died leaving him surviving his son Joseph, who is a minor of the age of 15 years ʌ and his sole heir-at-law and resides at Sherman, in the State of Texas; that the said Elizabeth Sterett died leaving her surviving your petitioner William G. Sterett and her daughter [Elizabeth]* Margaret Bowmer, formerly Margaret Sterett, as her sole heirs-at-law, and that the said Margaret Bowmer is a resident of Cloverport, in the State of Kentucky, and of full age.

5.

Your petitioners further represent that the said decedent, Joseph Holt, died seized and possessed of real estate in the city of Washington, District of Columbia, of the probable value of from $30,000 to $40,000, and also, so far as they are at present informed, the owner of personal property consisting of $66,000, of 3.65 regis-
3 tered bonds of the District of Columbia; $2,000, city of Louisville 5% bonds; $5,000, city of Louisville 4% bonds; each;
4 District of Columbia 6% bonds of the par value of $100 ʌ 16 Belt Line Railroad bonds of the par value of $500 each; 220 shares of the stock of the National Bank of Commerce of New York; two notes, aggregating the sum of $11,000, and about $12,000 in cash; that, in addition to the foregoing, the said decedent left a large library of miscellaneous books, besides his household furniture, bric-a-brac, paintings, silver and table ware, and a horse and vehicle, the value of which your petitioners are unable with any degree of accuracy to estimate.

[* Words enclosed in brackets erased in copy.]

6.

Your petitioners further show that, so far as they are advised, after careful and dilligent search and inquiry in respect of a will, the said Joseph Holt died intestate.

7.

Your petitioners further show that, excepting possibly some small grocery bill and about $90 of servant hire, together with the expense of his last illness and funeral, the whole of which will not aggregate to exceed $500, the said decedent left no indebtedness.

8.

Your petitioners further represent that, so far as they have any knowledge of the said estate, the investments as above set forth are all first class and may be divided among the parties in interest, as hereinbefore named, in kind, and that the said household effects and library may likewise be so divided; that the cash on hand is largely in excess of any demands that can be made upon said estate and may also be divided without unnecessary delay.

4 Wherefore your petitioners pray that such action may be taken by this honorable court as may be proper in the premises, and that your petitioners may be appointed administrators of said estate.

W. D. HOLT.
W. G. STERETT.
JOHN W. HOLT.

DISTRICT OF COLUMBIA, *ss:*

Before me, the undersigned, a notary public in and for the District aforesaid, personally appeared Washington D. Holt, William G. Sterett, and John W. Holt, who, being duly sworn, say that they have read the foregoing petition by them subscribed and are acquainted with the contents thereof; that the matters and things therein stated as of their own knowledge are true, and that as to the matters and things therein stated upon information and belief they believe them to be true.

W. D. HOLT.
W. G. STERETT.
JOHN W. HOLT.

Subscribed and sworn to before me this 17th day of August, 1894.

EDMUND VAN DYKE,
Notary Public.

[SEAL.]

5 *Order Granting Letters of Administration to the National Safe Deposit, Savings and Trust Company, D. C.*

Filed September 28, 1894.

In the Supreme Court of the District of Columbia.

In re the Estate of JOSEPH HOLT, Dec'd. Probat- No. 6283.

Upon consideration of the petition of the National Safe Deposit, Savings & Trust Company of the District of Columbia and the other papers filed and proceedings had herein, and it appearing to the satisfaction of the court that the said Joseph Holt departed this life intestate, it is, this 28th day of September, A. D. 1894, by the court adjudged, ordered, and decreed that letters of administration on said estate be, and the same are hereby, granted unto the National Safe Deposit, Savings and Trust Company of the District of Columbia.

CHAS. C. COLE,
Asso. Justice.

6 This is to give notice—

That the subscriber, of the District of Columbia, has obtained from the supreme court of the District of Columbia, holding a special term for orphans' court business, letters of administration on the personal estate of Joseph Holt, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 28th day of September next. They may otherwise by law be excluded from all benefit of the said estate.

Given under its hand this 28th day of September, 1894.

THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA,
By its president, BENJAMIN P. SNYDER.

JEREMIAH M. WILSON, *Proctor.*

7 *Petition for Probate and Letters Testamentary.*

Filed September 20, 1895.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Will of JOSEPH HOLT, Deceased. No. 6283 [Doc.]*

The petition of Luke Devlin respectfully represents:

1. That he is a citizen of the United States and a resident of Montgomery county, in the State of Maryland.

[* Word enclosed in brackets erased in copy.]

2. That Joseph Holt, late a citizen of the United States and a resident of the city of Washington, in the District of Columbia, departed this life in said city and District on or about the first (1st) day of August, A. D. 1894.

3. That besides a considerable amount of real estate situated in said city and District, said testator died possessed of the following goods, chattels, and personal estate, to wit: $70,000, par value, in registered bonds of the District of Columbia, the estimated value of which is about $79,000; $7,000 in bonds of the city of Louisville, Kentucky; 16 bonds of the Belt Line railroad, of the District of Columbia, of the par value of $500.00 each and of the estimated value of $400 each; 220 shares of stock of the National Bank of Commerce of New York, of the par value of $100 each and
8 of the estimated value of $175.00 each; two notes aggregating the sum of $11,000.00, and about $12,000 in cash, besides household furniture, books, bric-a-brac, paintings, silver and table ware, and a horse and vehicle, which said last-enumerated goods and chattels are of the estimated value of about $3,500.00.

4. That said Joseph Holt left a last will and testament, bearing date the seventh (7th) day of February, 1873, which is herewith presented for probate, and that said decedent left him surviving, as his only heirs-at-law and next of kin, the following persons:

Washington D. Holt, a nephew and resident of Kentucky.

John W. Holt, a nephew and resident of Yazoo City, Mississippi.

Lockie Holt, Robert Holt, Thomas Holt, and James Holt, nephews, and Sarah Holt, a niece, who are non-residents of the District of Columbia and whose place- of residences are to your petitioner unknown.

William G. Sterrett, a nephew and a resident of the city of Washington, in the District of Columbia, and Margaret Bowmer, a niece, whose is a resident of Cloverport, in the State of Kentucky.

Joseph Holt, a great-nephew, who resides at Sherman, Texas.

5. That heretofore, to wit, on the 28 day of August, A. D. 1894, upon the petition of Washington D. Holt, John W. Holt, and William G. Sterrett, alleging, among other things, that said testator died intestate, letters of administration were granted to the National Safe Deposit, Savings and Trust Company, a body corporate doing business in the District of Columbia, in whose custody your petitioner is informed and believes, and therefore avers, the personal estate of the said testator now is.

9 Wherefore your petitioner prays as follows:

1. That the said will be admitted to probate and record and letters testamentary granted unto him accordingly.

2. That the order appointing the National Safe Deposit, Savings and Trust Company administrator of said decedent be declared void and for naught held.

3. And that your petitioner may have such other and further relief as the nature of his case may require.

LUKE DEVLIN.

DISTRICT OF COLUMBIA, *ss*:

I, Luke Devlin, on oath say that I have read the foregoing petition by me subscribed and know the contents thereof; that the allegations therein set forth as of my own personal knowledge are true and those set forth upon information and belief I believe to be true.

LUKE DEVLIN.

Subscribed and sworn to before me this 18 day of September, A. D. 1895.

[SEAL.] GEO. K. FINCKEL,
Notary Public.

10 DISTRICT OF COLUMBIA, *ss*:

On the — day of ——, A. D. 1895, came Luke Devlin and made oath on the Evangels of Almighty God that he does not know of any will or codicil of Joseph Holt, deceased, late of the city of Washington, District of Columbia, other than the foregoing instrument in writing, and that he received the same from L. P. Wright, Esq., register of wills, on or about the 26th day of August. A. D. 1895.

LUKE DEVLIN.

Subscribed and sworn to before me this 18th day of September, A. D. 1895.

GEO. K. FINCKEL.
[SEAL.] *Notary Public.*

11 *Caveat.*

Filed October 18, 1895.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Late of the City of Washington, District of Columbia, Deceased. No. 6283, Docket No. 20.

To the honorable the justice of the supreme court of the District of Columbia, holding said special term for orphans' court business:

The petition of Washington D. Holt, William G. Sterrett, Margaret Bowmer, John W. Holt, Lockie W. Iglehart, Sarah Holt, by John W. Holt, her guardian; Robert S. Holt, Thomas Holt, and James Holt respectfully represents:

A certain paper-writing bearing date the 7th day of February, A. D. 1873, purporting to be the last will and testament of Joseph Holt, deceased, in and by which Luke Devlin, of the city of Washington, District of Columbia, is appointed executor thereof, having been heretofore propounded before this court as such last will and testament of the said Joseph Holt, deceased, for probate in and by said court, but upon which no action has yet been taken by the

court admitting the same to probate, the undersigned caveators, Washington D. Holt, William G. Sterrett, Margaret Bowmer,
12 John W. Holt, Lockie W. Iglehart, Sarah Holt, by John W. Holt, her guardian; Robert S. Holt, Thomas Holt, and James Holt, pursuant to the law and statute in such case made and provided, do hereby contest the said probate and the validity of the said paper-writing so purporting to be such last will and testament of the said Joseph Holt, deceased, and for that purpose allege against the validity of such alleged will and against the competency of the proof thereof as follows:

1. That the said paper-writing is not the last will and testament of the said Joseph Holt, deceased.

2. That the said paper-writing so purporting to be the last will and testament of the said Joseph Holt, deceased, is a forgery and never was signed or acknowledged by the said alleged testator.

3. That the said paper-writing never was signed by the alleged contesting witnesses whose names are affixed thereto as the witnesses to the execution of said alleged will, nor was the same declared to be his last will and testament by the said alleged testator in the presence of said alleged witnesses or either of them.

4. These caveators further allege that the said attesting witnesses to said alleged will, whose names appear as such on the face of said paper-writing, did not, nor did either of them, sign his or her name as a witness to said alleged will at the request of the said alleged testator nor in his presence nor in the presence of each other.

5. These caveators further allege that even if the said alleged testator did execute and sign the said paper-writing, which they deny as aforesaid, yet these caveators say that the said paper-writing purports to dispose of both real and personal property, but it
13 does not appear thereby that the same was duly executed, as required by law, in this, that it is required by law that such last will and testament shall be attested and subscribed in the presence of the testator by three or four credible witnesses, or else it shall be utterly null and void and of none effect, whereas it does not appear by the face of said alleged last will and testament of the said Joseph Holt, deceased, that the said attesting witnesses did so subscribe the same in his presence.

6. These caveators further allege that even if the said alleged testator and the said alleged witnesses did sign and witness the said paper-writing, as the face of said alleged will purports, which these caveators deny, yet the said paper-writing so propounded for probate and record is not the last will and testament of the said Joseph Holt, deceased, because these caveators say that even if the said alleged testator ever did sign and execute the same, which they deny, it was afterwards by him revoked, annulled, and destroyed by the removal and tearing of his name from said paper-writing by the said alleged testator and by otherwise mutilating and by burning the same, which mutilation and destruction was done with the intent to revoke and cancel the said alleged will, and these caveators say that thereby and by other acts of the said Joseph Holt, deceased, done

with the purpose and intent to cancel and revoke the said alleged will, the same was cancelled and revoked.

7. These caveators further say that even if the said alleged will was in fact ever executed by the said Joseph Holt, deceased, which they deny, and even if the same was, therefore, during his lifetime in his possession, yet the same was not in the possession of the said alleged testator at the time of his death and was not found in his possession or with any of his papers or effects or in any
14 custody or keeping which was known to or authorized by him; but, on the contrary, the same had been mutilated and destroyed as aforesaid and was fraudulently and without disclosing his name or address sent to the register of wills of the District of Columbia through the mails by some unknown person after having been pasted together so as to render it legible; this without the knowledge or consent of the said Joseph Holt, deceased.

8. These caveators further say that even if the said Joseph Holt, deceased, did execute and sign the said paper-writing, which they deny, yet they allege that such signature and execution was procured by the fraud and undue influence practiced against and upon the said Joseph Holt, deceased, by some person or persons to them now unknown.

Wherefore these caveators pray that the said paper-writing may be refused probate, and that issues may be framed between these caveators and the proponents of said alleged will and sent to the circuit court, to be there tried by jury in order to determine the allegations of fact bearing upon the validity of said will.

WASHINGTON D. HOLT.
W. G. STERETT.
MARGARET BOWMER,
By W. G. STERETT.
JNO. W. HOLT.
LOCKIE W. IGLEHART.
SARAH HOLT,
By JNO. W. HOLT, *Guardian.*
ROB'T S. HOLT,
THOMAS HOLT,
JAMES HOLT,
By JNO. W. HOLT.

SHELLABARGER & WILSON,
Att'ys for Caveators.

15 DISTRICT OF COLUMBIA, *ss:*

Before me, Edmund Van Dyke, a notary public in and for the District aforesaid, personally appeared Washington D. Holt, one of the caveators whose name is subscribed to the foregoing petition, who, being duly sworn, says that he has read the foregoing caveat by him subscribed and is acquainted with the contents thereof, and that the matters and things therein stated are true as he verily believes.

WASHINGTON D. HOLT.

Subscribed and sworn to before me this 17th day of October, A. D. 1895.

[SEAL.] EDMUND VAN DYKE,
Notary Public, D. C.

DISTRICT OF COLUMBIA, *ss:*

Before me, Edmund Van Dyke, a notary public in and for the District aforesaid, personally appeared William G. Sterrett, for himself and Margaret Bowmer, and John W. Holt, for himself, Sarah Holt, Robert S. Holt, Thomas Holt, [and]* James Holt, * who, being duly sworn, say that they have read the foregoing and annexed caveat by them subscribed and are acquainted with the contents thereof, and that the matters and things therein stated are true as they verily believe.

W. G. STERETT.
JNO. W. HOLT.

* and Lockie W. Iglehart.

Subscribed and sworn to before me this 18th day of October, A. D. 1895.

[SEAL.] EDMUND VAN DYKE,
Notary Public, D. C.

16 *Answer of Luke Devlin, Lizzie Hynes, and Josephine Holt Throckmorton.*

Filed December 2, 1895.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. 6283, Doc. No. 20.

Answer of Luke Devlin, Lizzie Hynes, and Josephine Holt Throckmorton to caveat.

The respondents Luke Devlin, Lizzie Hynes, and Josephine Holt Thockmorton, to so much and such parts of the petition of Washington Holt and others, filed herein on the eighteenth day of October, A. D. 1895, as they are advised it is material for them to make answer unto, answering, say:

1. They affirm that, according to their information and belief, the paper-writing dated the seventh day of February, A. D. 1873, purporting to be the last will and testament of the said Joseph Holt and propounded as such by Luke Devlin, one of the respondents in this cause, is in fact the last will and testament of the said Joseph Holt, and they deny the allegations to the contrary in said petition contained.

2. They deny the allegations in the second paragraph of the said

[* Word enclosed in brackets erased in copy.]

petition that the said paper-writing is a forgery, and that the same was not signed and acknowledged by the said testator.

17 3. They deny, according to their information and belief, the allegation in the third paragraph of said petition contained that the said paper-writing was not signed by the attesting witnesses whose names are thereto affixed, and that the said instrument was not declared by the above-named testator as his last will and testament in the presence of said witnesses and of each of them, and as aforesaid they assert the contrary of each of said allegations to be true in fact.

4. These respondents believe the allegation of the fourth paragraph of said petition that the attesting witnesses did not sign their names as witnesses to the said will at the request of said testator nor in his presence nor in the presence of each other to be wholly untrue in fact, and as they are advised and believe, and therefore aver, the said allegations are also wholly immaterial in law for all purposes touching the validity and effect of the said instrument in so far as the jurisdiction of this court is concerned.

5. The fifth paragraph of said petition for caveat, as *this* respondent *is* advised and believes, and therefore avers, sets forth only matters of law and requires no answer from them. Nevertheless, as they are advised and believe, and therefore aver, the said fifth paragraph is insufficient in law, in that it does not aver that the said paper-writing was not attested and subscribed in the testator's presence by three credible witnesses, and, further, because such attestation is necessary only to the validity of the said paper-writing in so far as it affects the real estate of the testator, whereas the present proceeding in this court relates wholly to the personal estate of said decedent, to which personal estate the jurisdiction of this court is exclusively confined, and the respondents pray the same benefit of such insufficiency as if they had demurred to said fifth paragraph.

18 6. These respondents do not admit, but on the contrary deny, upon information and belief that the said paper-writing was revoked by the said testator or that the said instrument was mutilated or burned by him for the purpose of revocation or cancellation or for any other purpose whatsoever, as is alleged in the sixth paragraph of the said petition, and call for strict proof as to each and every of said allegations.

7. These respondents have no means of knowing and do not in fact know and are accordingly unable either to admit or deny whether the said paper-writing was in the possession of the testator at the time of his death, or whether it was found among his papers or effects, or in whose custody said paper-writing was at the time of his death or afterwards, and they call for strict proof as to each and every of the allegations in said seventh paragraph contained touching the custody and keeping of said instrument. They admit on information and belief that the said paper-writing was forwarded to the register of wills of the District of Columbia through the mails by some person to these respondents unknown, and that said instrument had apparently been worn where creased or folded and

had been pasted upon another paper because of such wear, but they deny that it depended or depends in any manner upon such pasting for its legibility. They deny that the sending of said instrument to the register of wills was fraudulent, and aver that if there was any fraud in the matter it consisted in withholding the said paper-writing from the files of the register of wills' office beyond the period within which the custodian or other person into whose possession it had come was required by law to file it. Said paper was forwarded to the register of wills heretofore, to wit, on the twenty-sixth day of August, A. D. 1895, more than a year after the testator's death, and presumably without his knowledge, as the said seventh para-
19 graph of the petition alleges.

8. These respondents are wholly unaware of any fraud or undue influence practiced against or upon the said testator by any person or persons whomsoever, and believe the allegations of said petition that the execution of said will was procured by such means to be wholly unfounded and untrue.

If the said paper-writing is a forgery, or if it was not signed by the said Joseph Holt, or if it was procured by fraud or undue influence, or if it was revoked by him, these respondents do not desire its admission to probate and record; but believing that none of the allegations in said petition touching the validity of the said instrument are well founded in point of fact, and that the same are wholly untrue, they unite in the prayer in said petition contained that appropriate issues may be framed and sent to the circuit court for trial by jury, in order to determine the question of their truth and of the validity of said will.

LUKE DEVLIN.
LIZZIE HYNES.
JOSEPHINE HOLT THROCKMORTON.

DISTRICT OF COLUMBIA, *ss:*

I, Luke Devlin, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof, and that the allegations therein set forth as of my own personal knowledge are true and those set forth upon information and belief I believe to be true.

LUKE DEVLIN.

Subscribed and sworn to before me this 19th day of November, A. D. 1895.

GEO. K. FINCKEL,
[SEAL.] *Notary Public.*

20 STATE OF KENTUCKY, }
Marion County, } *ss:*

I, Lizzie Hynes, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof, and that the allegations therein set forth as of my own personal knowledge are true, and those set forth upon information and belief I believe to be true.

LIZZIE HYNES.

Subscribed and sworn to before me this 27th day of November, A. D. 1895.

S. B. BOTTOM,
[SEAL.] *Notary Public, Marion County, Ky.*

My commission expires 2nd Feb'y, 1898.

——— ———, *ss:*

I, Josephine Holt Throckmorton, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof, and that the allegations therein set forth as of my own personal knowledge are true, and those set forth upon information and belief I believe to be true.

JOSEPHINE HOLT THROCKMORTON.

Subscribed and sworn to before me this 20th day of November, A. D. 1895.

E. ORMONDE POWER,
[SEAL.] *Notary Public, N. Y Co.*

21 *Order Transmitting Issues to Circuit Court.*

Filed March 20, 1896.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. 6283 Doc. No. 20.

Upon the motion of the counsel for the caveators in this case, counsel for the caveatees being present and the matter having been argued and submitted to the court, it is this 20th day of March, A. D. 1896, ordered that the following issues in this case be certified to the supreme court of the District of Columbia, holding a special term as a circuit court, for trial by a jury.

1. Was the paper-writing bearing date the seventh day of February, A. D. 1873, which was filed in this court on the 26th day of August, A. D. 1895, executed by the said Joseph Holt as his last will and testament?

2. Was the execution of said paper-writing procured by fraud exercised and practiced upon said Joseph Holt by any person or persons?

3. Was the execution of said paper-writing procured by the undue influence of any person or persons?

4. If the said paper-writing was executed by the said
22 Joseph Holt as his last will and testament, has the same been revoked by said testator?

A. B. HAGNER,
Asso. Justice.

23 *Findings of Jury.*

Filed June 30, 1896.

Supreme Court of the District of Columbia.

THURSDAY, *June* 25, 1896.

Session resumed pursuant to adjournment, Mr. Justice Bradley presiding.

LUKE DEVLIN, Executor, *et al.*, Caveatees, Plaintiffs, *v.* WASHINGTON D. HOLT *et al.*, Caveators, Defendants.	At Law. No. 39648, Cal. 798.

Come again the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after the case is given them in charge, on their oath say: In answer to the first issue, "Was the paper-writing bearing date the seventh day of February, A. D. 1873, which was filed in this court on the 26th day of August, A. D. 1895, executed by the said Joseph Holt as his last will and testament?" they answer, "No." In answer to the second issue, "Was the execution of said paper-writing procured by fraud exercised and practiced upon said Joseph Holt by any person or persons?" they answer, "No." In answer to the third issue, "Was the execution of said paper-writing procurred by the undue influence of any person or persons?" they answer, "No." In answer to the fourth issue, "If the said paper-writing was executed by the said Joseph Holt as his last will and testament, has the same been revoked by said testator?" they answer, "No, because it was not executed;" and the court orders the clerk to certify said an-
24 swers to that branch of the court from which said issues came.

DISTRICT OF COLUMBIA, *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing is a true copy of the answers of the jury to the issues in above-entitled cause.

[SEAL.] Witness my hand and the seal of said court this 30th day of June, A. D. 1896.

JOHN R. YOUNG, *Clerk.*

25 *Motion for Judgment.*

Filed July 1, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. —.

Washington D. Holt, William G. Sterett, Margaret Bowmer, John W. Holt, Lockie W. Iglehart, Sarah Holt, by John W. Holt, her

guardian: Robert S. Holt, Thomas Holt, and James Holt, caveators in this case and next of kin of Joseph Holt, deceased, move the court to enter a final judgment and decree in this case declaring and adjudging that the paper-writing dated February 7th, 1873, filed in this court on the 26th day of August, 1895, and purporting to be the last will and testament of Joseph Holt, was never executed by the said Joseph Holt and is not his last will and testament, and further adjudging that the same shall not be admitted to probate as such last will and testament.

And the said caveators and next of kin further move the court to direct the administrator heretofore appointed in this case to proceed with the administration according to law.

J. M. WILSON,
WORTHINGTON & HEALD,
Attorneys for Caveators and Next of Kin of Joseph Holt.

26 To Messrs. J. J. Darlington, Blair Lee, and Benjamin Butterworth, attorneys for Elizabeth Hynes, Josephine Holt Throckmorton, and Luke Devlin, caveatees:

Take notice that we shall call up the above motions on Friday, July 3, at the opening of the court or as soon thereafter as counsel can be heard.

J. M. WILSON,
WORTHINGTON & HEALD,
Attorneys for Caveators and Next of Kin of Joseph Holt.

Service accepted.
J. J. DARLINGTON,
For Caveatees.

27 *Order Denying Probate of Paper-writing Dated February 7, 1873.*

Filed July 10th, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. —.

Upon consideration of the motion of Washington D. Holt and others, caveators in this case, which was filed in this cause July 1, 1896, and upon consideration also of the certificate of the clerk of this court, filed herein on the 30th day of June, 1896, and upon its appearing to the court that counsel for Elizabeth Hynes, Josephine Holt Throckmorton, and Luke Devlin, caveatees in this case, have been duly notified that said motion would be called up at this time, it is this 10th day of July, 1896, ordered, adjudged, and decreed that the paper-writing dated February 7th, 1873, filed in this court on the 26th day of August, 1895, purporting to be the last will and testament of said Joseph Holt, was never executed by the said Joseph Holt as or for his last will or testament, and that the same

is not his will, and that probate of the same be, and is hereby, denied; and thereupon the caveatees, Luke Devlin, Elizabeth Hynes, and Josephine H. Throckmorton, in open court pray an appeal herefrom upon their exceptions to the rulings of the trial
28 justice at the trial of the issues in said cause, which appeal is allowed by the court, and the penalty of the appeal bond, to operate as a supersedeas, is fixed in the sum of five thousand dollars, provided that the caveatees file in this court a consent in writing within seven days from this date that the court may at any time during the pendency of the appeal order the sale of any of the securities or the investment of any of the funds in the hands of the administrator.

CHAS. C. COLE,
Asso. Justice.

29 *Consent of Elizabeth Hynes.*

Filed July 17, 1896.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. —, Doc. —.

Now comes Elizabeth Hynes, one of the caveatees in the above-entitled cause, and consents that the court may at any time during the pendency of the appeal noted herein on the 10th day of July, A. D. 1896, order the sale of any of the securities or the investment of any of the funds in the hands of the administrator heretofore appointed in this cause.

ELIZABETH HYNES.

Witness-:
C. C. McCHORD.
MRS. J. F. HARCOURT.

30 *Consent of Josephine H. Throckmorton.*

Filed July 17, 1896.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. —, Doc. —.

Now comes Josephine Holt Throckmorton, one of the caveatees in the above-entitled cause, and consents that the court may at any time during the pendency of the appeal noted herein on the 10th day of July, A. D. 1896, order the sale of any of the securities or the investment of any of the funds in the hands of the administrator heretofore appointed in this cause.

JOSEPHINE HOLT THROCKMORTON.

Witness:
C. B. THROCKMORTON,
Major, U. S. Army.

31 *Consent of Luke Devlin.*

Filed July 17, 1896.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. —, Doc. —.

Now comes Luke Devlin, one of the caveatees in the above-entitled cause, and consents that the court may at any time during the pendency of the appeal noted herein on the 10th day of July, A. D. 1896, order the sale of any of the securities or the investment of any of the funds in the hands of the administrator heretofore appointed in this cause.

LUKE DEVLIN.

Witness:
ALEXANDER T. HENSEY.

32 *Stipulation for Prosecution of Appeal.*

Filed July 30, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. —.

It is hereby stipulated by and between counsel for the caveators and caveatees in the above-entitled cause respectively that the caveatees Josephine H. Throckmorton and Luke Devlin may give their appeal bond in the sum of five thousand dollars ($5,000), with surety approved by the court or a justice thereof, and may prosecute their appeal from the decree of July 10th, 1896, without concurrence in said bond or in said appeal by the caveatee Elizabeth Hynes, in like manner and with like effect as if there had been a formal summons and severance as to said caveatee, Elizabeth Hynes.

J. M. WILSON,
A. S. WORTHINGTON,
Counsel for Caveatees.
J. J. DARLINGTON,
Of Counsel for Caveators.

33 *Withdrawal of Appeal by Elizabeth Hynes.*

Filed August 3, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. 6283.

Elizabeth Hynes, one of the caveatees in the above-antitled case, hereby withdraws and abandons the appeal taken by her to the

Court of Appeals of the District of Columbia from the judgment and order entered herein on the tenth day of July, 1896.

ELIZABETH HYNES.

ZELLA M. HULSE, *Witness.*

34 *Stipulation of Counsel as to Part Distribution, &c.*

Filed October 23, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. 6283.

It is hereby agreed—

1. That [at any time within — days from this date] * the appeal bond in the penal sum of five thousand dollars, which was filed herein on the 30th day of July, 1896, may be cancelled and withdrawn upon there being filed in lieu thereof a bond in the penal sum of five hundred dollars, signed by Josephine Holt Throckmorton and Luke Devlin, as principals, and by the Fidelity & Deposit Company of Maryland, [company] * as surety, said bond to be in other respects similar to said bond in the penal sum of five thousand dollars and to be filed with the approval of the court.

2. That after said bond in the penal sum of five thousand dollars shall have been so cancelled and withdrawn and said bond in the penal sum of five hundred dollars substituted therefor the appeal heretofore taken in this case to the Court of Appeals by said Josephine Holt Throckmorton and Luke Devlin shall be held to operate as a supersedeas only as to the one-half of the personal estate
35 of said Joseph Holt which in and by the paper in controversy in this case, dated February 7th, 1873, purporting to be the last will and testament of said Joseph Holt, is bequeathed to said Josephine Holt Throckmorton.

3. That after such substituted bond shall have been filed with the approval of the court said Josephine Holt Throckmorton and Luke Devlin shall not in any way oppose the immediate distribution, under an order of the court or otherwise, of the one-half of said estate which said paper-writing purports to bequeath to Elizabeth Hynes, under the name of Lizzie Hynes, provided, however, that of said one-half of said personal estate there shall be retained by the administrator heretofore appointed in this case, subject to the order of this court, the sum of ten thousand dollars to meet any claim that may be made by said Luke Devlin and allowed by the court on account of commissions upon said one-half of said personal estate in case said paper-writing should be finally admitted to probate as the last will and testament of said Joseph Holt, and to meet also such expenses, if any, of litigation as may be held properly chargeable to said one-half of said personal estate.

[* Words enclosed in brackets erased in copy.]

4. That this agreement shall be operative only in case the court shall make a final order directing a distribution of said one-half of said personal estate (less the sum of ten thousand dollars above agreed to be retained) to the next of kin of said Joseph Holt, to be embodied in the order approving such substituted bond.

A. S. WORTHINGTON,
Attorney for John W. Holt and Other Caveators.
J. J. DARLINGTON,
Sol. for Josephine H. Throckmorton & Luke Devlin.
JEREMIAH M. WILSON,
Attorney for Washington D. Holt.

36 *New Supersedeas Bond.*

Filed May 7, 1897.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Estate of JOSEPH HOLT, Deceased. No. 6283, Admr. Doc.

Know all men by these presents that we, Josephine H. Throckmorton and Luke Devlin, as principals, and the Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Washington D. Holt, William G. Sterrett, Margaret Bowmer, John M. Holt, Lockie M. Iglehart, Sarah Holt, Robert S. Holt, Thomas Holt, and James Holt in the full sum of five hundred dollars, to be paid to the said Washington D. Holt, William G. Sterrett, Margaret Bowmer, John M. Holt, Lockie M. Iglehart, Sarah Holt, Robert S. Holt, Thomas Holt, and James Holt, their executors or administrators or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 23d day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas the above-named Josephine H. Throckmorton and
37 Luke Devlin have prosecuted an appeal to the Court of Appeals of the District of Columbia to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia, and heretofore gave their supersedeas bond to prosecute their appeal in the penalty of $5,000, which bond, by stipulation between the parties in interest, through their counsel, respectively, it has been agreed shall be withdrawn upon the substitution of a new supersedeas bond in the penalty of $500, pursuant to which stipulation and with the approval of the court this bond is filed in substitution for said prior bond:

Now, therefore, the condition of this obligation is such that if the above-named Josephine H. Throckmorton and Luke Devlin shall prosecute their said appeal to effect and answer all damages and

costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOSEPHINE HOLT THROCKMORTON. [SEAL.]
LUKE DEVLIN. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND.
Attest: HENRY B. PLATT, *Vice-President.*
[SEAL.] JOHN W. WOOTEN, *Attorney.*

Sealed and delivered in presence of—
C. B. THROCKMORTON.
S. B. BUSHNELL.

Approved the 7th day of May, 1897.
A. B. HAGNER,
Justice S. C. D. C.

38 *Order Extending Time within which to File Transcript of Record.*

Filed June 30, 1897.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In re Will of JOSEPH HOLT. No. 6283, Admr. Doc. 20.

It is by the court, upon consent of the parties, this 30th day of June, A. D. 1897, ordered that the time within which the caveatees may file in the Court of Appeals the transcript of the record in their pending appeal from the decree of this court denying probate and record of the paper-writing bearing date the 7th day of February, A. D. 1873, purporting to be the last will and testament of the said Joseph Holt, is hereby extended for the period of thirty days from this date.

A. B. HAGNER,
Asso. Justice.

We consent.
J. M. WILSON,
A. S. WORTHINGTON,
For Caveators.
J. J. DARLINGTON,
For Caveatees.

39 Form 43.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

I, J. Nota McGill, register of wills for the District of Columbia and *ex officio* clerk of the said special term for orphans' court busi-

ness, do hereby certify the foregoing pages, numbered from 1 to 38, inclusive, to be a true copy of the originals of certain papers on file in the office of the register of wills in case No. 6283, estate of Joseph Holt, deceased, except the notice to creditors, page 6, of which no copy is on file in this office.

Seal Supreme Court of the District of Columbia, Probate Jurisdiction.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' court business, this 22nd day of July, anno Domini 1897.

J. NOTA McGILL.

40 Filed Jun- 30, 1897. J. R. Young, clerk.

In the Supreme Court of the District of Columbia.

In the Matter of the Will of JOSEPH HOLT. No. 39648. At Law. Doc. —.

Bill of Exceptions.

Filed for settlement by court November 3d, 1896.
6, 30, '97—34–411.

41 In the Supreme Court of the District of Columbia.

In the Matter of the Will of JOSEPH HOLT. At Law. No. 39648.

Bill of Exceptions.

Be it remembered that the above-entitled cause came on for trial on the 18th day of May, A. D. 1896, before Mr. Justice Bradley and a jury, Messrs. J. M. Wilson and A. S. Worthington appearing for the caveators and Messrs. Benjamin Butterworth, Blair Lee, and J. J. Darlington appearing for the caveatees.

Thereupon the caveatees offered testimony tending to show that Ellen B. E. Sherman, one of the attesting witnesses to the paper-writing bearing date the 7th day of February, 1873, and purporting to be the last will and testament of Joseph Holt, died in November, 1888; that U. S. Grant, another of said attesting witnesses, died on the 23rd day of July, 1885, and that William T. Sherman, the remaining attesting witness, died on February 14, 1891.

Thereupon, further to maintain the issues on their part, the caveatees produced as a witness on their behalf JOHN SHERMAN, who testified that he was a brother of the said William T. Sherman; that he was familiar with his handwriting, and that the lower signature to the said will was, in his opinion, the
42 genuine signature of the said William T. Sherman.

Said caveatees further produced as a witness on their behalf FREDERICK DENT GRANT, who testified that he was the eldest son of the late U. S. Grant; that he had abundant opportunities for

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becoming familiar with his handwriting and signature, and that the signature "U. S. Grant" to the said instrument of February 7, 1873, was, in his opinion, the genuine signature of his father.

The caveatees further produced as a witness on their behalf P. TECUMSEH SHERMAN, who testified that he was a son of William T. Sherman and Ellen B. E. Sherman; that he had frequently seen the said Ellen B. E. Sherman write, was familiar with her signature, and that the signature "Ellen B. E. Sherman" was, in his opinion, written by her.

On cross-examination the said witness further testified that the said Ellen B. E. Sherman usually wrote her name "Ellen Ewing Sherman," but that it was her habit to sign all legal papers "Ellen B. E. Sherman."

The caveatees further offered as a witness in their behalf HENRY B. BURNETT, who testified that he became acquainted with the late Joseph Holt in 1863; that he frequently saw the said Holt write, had considerable correspondence with him, which continued to the year 1889, and was familiar with his handwriting, and that both the body of the said paper-writing dated February 7, 1873, and the signature "J. Holt" were, in his opinion, in the handwriting of the said Joseph Holt.

Thereupon J. NOTA MCGILL, a witness produced on behalf of the caveatees, testified that he became register of wills of the Dis-
43 trict of Columbia on the 4th day of September, 1895; that at that time he found the said paper-writing of February 7, 1873, in the safe of the register of wills, and that the said paper-writing was in the same condition as to apparent burning and mutilation at that time as at the trial, except that witness had put certain strips on the back of it.

Thereupon it was agreed by counsel for the caveatees that said paper-writing came to the office of the register of wills by mail, anonymously and from an unknown source, on the 26th day of August, 1895, in an envelope addressed and postmarked as follows:

"To the register of wills, Washington, D. C."

Thereupon the said paper-writing of February 7, 1873, purporting to be the last will and testament of said Joseph Holt, was read in evidence by counsel for caveatees, which was objected to by the caveators on the ground that the paper was evidently separated into two parts; that it purported to be under seal, and the seal, if it ever bore one, had been torn away; that it appeared to have been burned and mutilated and had been sent to the register of wills anonymously, and that it was incumbent upon the caveatees to explain these circumstances before the will could be read to the jury, but the court overruled the said objection and admitted the said paper, which was read to the jury and was in the words and figures following:

44½ Thereupon ELIZABETH HYNES, one of the caveatees, testified on her own behalf that the said paper-writing was never in her possession, and that she never saw it until it was shown her on the witness-stand at the trial.

LUKE DEVLIN, another of the caveatees and the person named as executor in said paper-writing, thereupon testified that the said paper-writing was never in his possession, and that he first saw it in the office of the register of wills on the day it had been received there.

45 On cross-examination the said Devlin testified that he knew the said Joseph Holt well since 1862, having been a copyist and messenger at that time in the office of the judge advocate general when said Holt succeeded to that office; that he continued to be employed in said office until 1876, when the said Holt retired therefrom; that he had little communication with him in relation to office matters; that he visited him once or twice at his house; that he was in the habit of meeting him socially at the residence of Mrs. Throckmorton, Sr., the grandmother of Miss Josephine H. Throckmorton, from 1865 to 1878; that he had not seen Mrs. Throckmorton, Sr., more than four or five times during a period of ten years preceding the receipt of the will at the register's office, and on learning of the existence of the will he had to consult the city directory to ascertain where she then lived; that on the day the will reached the register of wills he received a telephone message from the register, went to his office, and saw the will for the first time; then called on Mrs. Throckmorton, Sr., and on the same day telegraphed Miss Josephine H. Throckmorton of the finding of the will, having first learned the address of her father upon inquiry at the War Department; that he called on several occasions in later years at said Holt's house and was informed by the colored servants that he was out or that he was engaged, and asked witness to call again, the last of these visits being about April 9, 1894, shortly before his death; that he met said Holt outside on several occasions, the last of which was about two years before his death, and conversed with him.

46 Thereupon JOSEPHINE H. THROCKMORTON, the remaining caveatee, testified that she never had the will in her custody; that she never saw it until it was shown her by the register of wills in the latter part of October, 1895, and that she first knew of its existence through a telegram from Mr. Devlin, which she, in New York city, received from Luke Devlin in Washington, August 26, 1895.

On cross-examination said witness further testified that she knew Luke Devlin when a child and had not seen him since until after the will was filed.

Thereupon the caveatees announced their *prima facie* case closed, but counsel for the caveators objected that it was incumbent upon the caveatees to put in all their testimony essential to the establish-

ment of the alleged will before caveators were called upon to offer any; whereupon the court ruled that, because of the fact that there was no attesting clause to the will, it was proper and necessary for the caveatees to offer all the evidence they proposed to offer upon the subject of the genuineness of the signature of Joseph Holt to the will, and the counsel of the caveatees accepted the said ruling as being a matter within the discretion of the court.

47 Thereupon the caveatees offered testimony tending to prove that the testator had corresponded with Elizabeth Hynes for forty years, and that in her opinion both the body of the will and the signature were in his handwriting; that the caveatee Luke Devlin had had daily opportunity for thirteen years of becoming familiar with his handwriting, and that the signature to said instrument was undoubtedly in testator's handwriting, and that the caveatee Josephine Holt Throckmorton had corresponded with him, was familiar with his handwriting, knew his signature, and that both the will and signature were in the handwriting of the said Joseph Holt.

The caveatees further produced as a witness on their behalf WILLIAM S. YEATMAN, who gave testimony tending to prove that he had been disbursing officer in the War Department since 1886; that numerous vouchers and other papers containing the signature of the late Joseph Holt came into his official possession, and that he was familiar with the signature of the said Holt; that he had been in the War Department twenty-five or thirty years, during all of which time he had seen the signatures of said testator upon official papers; that these papers are still in the department and witness still has occasion to refer to them, and that the signature "J. Holt" to the said paper-writing of February 7, 1873, was in the handwriting of said testator.

On cross-examination said witness further testified that testator had several styles of signature—sometimes inclining to the right, sometimes upright, and sometimes backhand; that there was a similarity about all his signatures, however, that he could

48 find a signature just like that to the will, and would do so if the necessary requisition were made on the Secretary of War; that testator's handwriting was variable at all times, but there was a general character to his writing that was individual.

Further to maintain the issues on their part joined the caveatees produced as witnesses on their behalf the Rev. John G. Butler, Theophilus Gaines, Charles B. Throckmorton, Mrs. Fannie W. Throckmorton, John C. Hesse, Robert R. Hitt, Franklin T. Howe, Mary McChord Ray, and A. E. H. Johnson, all of whom testified that they had seen the testator write, had corresponded with him, were familiar with his handwriting, and that both the body of the will and the signature of the testator thereto were, in their opinion, in the handwriting of the said Joseph Holt.

And upon the cross-examination of the said MARY MCCHORD RAY the following questions were asked and answers given :

Q. Do you know of your own knowledge of any difficulty between your husband and Judge Holt?

Mr. DARLINGTON: I object to that. I cannot see the relevancy of the inquiry.

The WITNESS: I cannot say it was a difficulty.

Mr. DARLINGTON: This lady has testified to his handwriting, and she is asked now as to the nature of some misunderstanding or difficulty between the testator and her husband.

Mr. WORTHINGTON: We will not press it. Upon being further advised by Judge Wilson, who has other information about the matter, I desire to ask the question and I propose to press
49 this inquiry for the purpose of showing the animus of this witness towards one of our clients, Mr. Washington Holt. I do not care to state what it is if my friend, upon that statement, will allow it to go in. If necessary, I will state to your honor just what I offer to prove.

Mr. DARLINGTON: I object to it because it is purely a collateral matter, and, in the second place, because I think she is incompetent to testify as to any matter of this nature which she can only know as a wife.

Mr. WORTHINGTON: So far as the question of its being collateral is concerned, certainly my friend will not contend that anything is collateral which tends to show that a witness is hostile to a party or some of the parties on the side opposite to that for which she is called. I offer to show that Judge Holt had a claim against this lady's husband, upon which he obtained a judgment, which he transferred to Mr. Washington Holt, and that Washington Holt proceeded to enforce it. The original debt was secured by a mortgage and he pressed it against them until it was settled.

Mr. DARLINGTON: We will concede that.

Mr. WORTHINGTON: I am not bound to take a confession.

Mr. DARLINGTON: Then I stand on my objection.

The COURT: The object which is asserted by counsel for the caveators seems to me to be a legitimate one—that is, to ascertain the bias of the witness. Of course, any controversy between her husband and Judge Holt would be collateral to this inquiry, but for the purpose of ascertaining the bias of the witness it is legiti*am*te.

Mr. WORTHINGTON: We all desire to be entirely candid in
50 the way we are proceeding here, and while we ask this for this purpose we will contend that it may well be competent for another purpose—that is, as tending to show the relations between Judge Holt and the people who claim under this will. Whether that is competent or not and whether my friend will object to it will appear at the proper time. It is a large question, which we are prepared to debate.

Mr. DARLINGTON: We are content with our exception for the present. We object to it for any purpose on the two grounds stated.

By Mr. WORTHINGTON:

Q. I now ask you, Mrs. Ray, if it is not true that about the time your correspondence with Judge Holt ceased he obtained a judgment for $4,000 or thereabouts against your husband.

A. I have not the least idea. My husband did not tell me his business. He knew my relationship with Judge Holt and I did not want to know about it. He was always a kind friend to me and I never talked with him on the subject.

Q. Do you know, as a matter of fact, that there was such a claim, and that it afterwards came into the hands of Mr. Washington Holt, one of these heirs?

A. I know that he had a note against my husband, who was unfortunate in his business and who was only getting a small salary. He tried to pay this note. Judge Holt had a note against my husband and my husband tried to pay it with the small salary that he got. He went down last Thanksgiving day and tried to have that note put aside for sixty days. I think that Mr. Washington Holt had a mortgage on our household effects and on our books, perhaps,
51 and he asked him to put it off for a few days. My husband told me when he came back——

Q. You cannot state what your husband said.

Mr. DARLINGTON: All she knows is what her husband told her.

The WITNESS: That is all I know about it.

By Mr. WORTHINGTON:

Q. I have asked you did you know anything about it of your own knowledge.

A. I do; I know that much. That is all I know except what my husband told me.

1st Exc.

To the cross-examination of which witness in relation to the said transaction between her husband, the testator, and Washington Holt the caveatees, by their counsel, then and there objected upon the grounds above set forth; but the court overruled said objection and permitted the said questions to be asked and required the witness to answer the same; to which rulings of the court and to each and every of the said questions and answers the caveatees, by their counsel, then and there duly excepted, and the said exception was noted at the time upon the minutes of the court.

The said witness, ROBERT R. HITT, upon his cross-examination was interrogated and testified as follows:

Q. You have confined your statement, I observe, carefully to the handwriting on that paper. You knew Judge Holt well, I presume?

A. I was well acquainted with him.

Q. You knew his capabilities, his characteristics, his standing as a lawyer, and all that?

A. Yes.

52 Q. I will ask you now to look at the phraseology of that paper which you have in your hand and state whether you find there any of the characteristics of Judge Holt in the composition of that paper.

Mr. DARLINGTON: I object to that. The question here is as to his handwriting.

The COURT: I am not so clear as to whether that is objectionable or not. The witness has testified that he knew Judge Holt and had known him for many years, and that he was associated with him in varying circumstances. In his answer as to the handwriting in the body of the paper he confines his answer carefully to handwriting. Whether that was done purposely or not I do not know.

Mr. BUTTERWORTH: Our point is, if your honor please, that the question would go to assailing the probability of his drawing that character of paper—as to whether he would have drawn his will in that way and as to whether he would have used peculiar phraseology. That opens up the entire question.

The COURT: The question was simply as to Judge Holt's characteristics.

Mr. BUTTERWORTH: In the matter of the phraseology.

The COURT: But not with reference to this paper.

Mr. WORTHINGTON: Yes; the question was with reference to the phraseology of this paper.

Mr. DARLINGTON: We object to it, first, because it is not responsive to the direct examination; secondly, it is not a part of our case-in-chief, but a part of the case of the other side, if competent at all, and, thirdly, because it is not a proper subject for
53 the cross-examination of the witness under the rules of evidence. By well-established rules a witness can testify to handwriting, but not as to his conjecture as to whether the testator would use a particular phraseology or not. We object to it on those three grounds.

Mr. WORTHINGTON: We have reached the stage in this case in which one of the most important questions in it has developed. The question now presented to the court is whether this is a matter that may be advanced by us on cross-examination of the witnesses for the plaintiffs. We are not to forget what we are trying. The testimony which is being adduced now by the plaintiffs is in support of the first issue, which is certified to this court and jury for determination, and that is whether Joseph Holt executed that paper as his last will and testament. For the purpose of supporting their contention that he did they have offered evidence as to his handwriting and the genuineness of his signature, which is and can be only the opinion of the persons who have qualified themselves to testify on the subject that it is his signature, or that they think it is his, to the best of their knowledge. While some of them are, perhaps, a little anxious and have said that it is his signature, yet in substance it must remain a mere matter of opinion, because they cannot know it unless they saw him write it. Witnesses have testified to that effect, and they have given testimony tending to show

that Judge Holt wrote that will, and that the paper, which is called a will, is in his handwriting, and that the signature at the
54 bottom of it is in his handwriting. I respectfully submit that it is the very heart of cross-examination to elicit from a witness who has testified in that way anything which will tend to show that Joseph Holt was not the creator of that paper. They have, of course, asked the question of the witnesses as to their opinion of the handwriting. Judge Hitt has, with emphasis, confined his opinion so far to the question of the appearance of the writing as though he wanted it understood that he does so confine it. We are now trying to find out what he wishes to be understood as saying, because we know no more about it than the court and jury. In order to illustrate that I will use the illustration that I made use of the other day: Suppose it should appear that this paper was full of bad spelling and bad grammar; that Judge Hitt, from his acquaintance and long association with Judge Holt, should know that he was a man who scarcely ever misspelled a word and who was entirely familiar with the rules of grammar, would it not be competent for us, on cross-examination, to show that in his opinion, looking at the whole paper, it was not Judge Holt's production, or from the manner in which it was expressed and the manner in which it was punctuated he saw something about it which indicated that Judge Holt was not the man who created it? They asked him about one part of the paper, and are we to be confined in our cross-examination to that part? I should think not, and therefore it is not collateral.

Mr. BUTTERWORTH: Where would you draw the line? What might you not go into if you can go into this?

Mr. WORTHINGTON: To answer that question would require me to make a half hour's speech, and it is not incumbent upon
55 me to do so. I say that this is not collateral because the question is not whether this is the handwriting of Judge Holt, but the question is whether this is his paper. I suppose that my friends will not contend that Judge Holt got somebody to write a will for him and then copied it with its unlawyerlike phrases, bad punctuation, or mispunctuation, wherever there is any, or no punctuation. If it appears upon an examination of the paper that it bears upon its face marks indicating that Judge Holt did not create it, I submit that it is an exceedingly relevant matter on their part of the case.

Let me here say to my friends, that they may not misunderstand what our position about this matter is, that when we claimed the other day and your honor decided that they were bound to go on with this evidence we understand and we would like to have them know that we understand that they are to offer all the evidence that they intend to offer to show that this is a genuine document, whether it refers to handwriting or whether it refers to something else. We understand that they are now engaged in producing all the evidence they intend to submit to show that Judge Holt was the creator of that paper. They cannot now offer testimony as to his handwriting and keep back other evidence until after we get

through with our case. The question whether this paper is in such a form and so expressed and so punctuated as to be his is just as much a part of their case as anything in it. The issue which this jury is to try is not whether that is in the handwriting of Judge Holt. The probate court has not sent here any issue as to
56 whether that paper is in the handwriting of Judge Holt, but the issue is whether he executed that paper as his last will and testament, and everything bearing upon that issue is a part of their case. It is what they are seeking to prove and establish before this jury. When they get through it will be time enough for us to be heard upon that matter.

I submit to your honor that anything that may be developed on cross-examination of any of their witnesses who have given testimony tending to establish their side of that issue which will tend to show that the issue should be found against them is competent at this time, is competent in the case, and is competent upon cross-examination.

After further argument the court said:

There is a good reason for receiving the opinion of witnesses as to the identity of handwriting, because handwriting has always its individuality. It is characteristic of the person who has written it, or at least that it the basis of the reason upon which persons who have a certain amount of familiarity with the handwriting which is in question are permitted to testify as to its identity. That is a recognized instance in which opinion evidence may be received. My attention has not been directed to any case in which opinion evidence of the character that is called for here has been admitted in evidence or has been held to be competent. It appears to me to be clearly incompetent. It is perfectly competent to show the characteristics of the individual, his attainments, his education, his style and manner of writing by witnesses who are familiar with it, but when you come to their inference from those character-
57 istics and from that amount of education it appears to me that the inference is for the jury. It is not a matter for the expression of an opinion by an ordinary witness. This question appears to me to trespass upon the function of the jury. I think the objection should be sustained.

Mr. WILSON: We will reserve an exception.

The COURT: That does not prevent an inquiry into Judge Holt's characteristics. I think that would be competent upon the cross-examination of this witness.

And thereupon the caveatees rested.

58 Thereupon the caveators, to maintain the issues upon their part, offered in evidence the deposition of JOHN JUDSON BARCLAY, tending to prove that said deponent knew the testator intimately from 1857 to 1866 and at intervals thereafter until the time of his death, and that he had last seen him in November, 1893, when he was in impaired health and in a darkened room, and said deponent, in his said deposition, testified as follows:

"5 Q. Please state whether or not at the time you saw Judge Holt in November, 1893—if you shall state that you did see him at said time—Judge Holt had any conversation with you in regard to the disposition by him of his property and estate; and, if you did, please state in full just what that conversation was and all that was said by Judge Holt, if anything, in regard to that subject."

To which interrogatory the caveatees objected on the ground that evidence of alleged conversations with or declarations by the testator referred to in said interrogatory in regard to the disposition by him of his property and estate were inadmissible either to impeach the execution by him of the will of February 7, 1873, or to prove the revocation of said will.

But the court overruled the said objection and permitted the answer of the deponent to be read in evidence to the jury as follows:

"A. In our conversation he referred most touchingly to my deceased sister, Mrs. Sarah Barclay Johnson, and made many kind inquiries in regard to my aged mother, who had also been his warm personal friend for many years. In this connection he re-
59 marked, I have made my will and have made provision for her to receive some pictures, etc., which my sister had painted for him, as well as an ambrotype or photograph of herself, which he highly prized and wished my mother to possess."

2nd Ex.

To which ruling of the court and to the admission of which answer in evidence the caveatees then and there duly excepted, and said exception was noted at the time upon the minutes of the court.

And thereupon the caveators, further to maintain the issues on their part, produced as a witness on their behalf THOMAS F. BARR, who gave testimony tending to prove that he became acquainted with the testator in April, 1865, when the latter was judge advocate general of the U. S. army, at which time the witness was ordered to report to him for duty; that he remained on duty with him, with an interval of four months, until 1872, having almost daily opportunities of seeing his manuscript and signature, and that he had received some letters from him after 1872; that, in his opinion, testator did not write the will in controversy; that the handwriting is in some respects similar, but, as a whole, entirely unfamiliar and different from any writing of his witness ever saw; that the signature is a very close resemblance; that testator was very particular in punctuation, using a full share of commas; that witness had great respect for his abilities as a lawyer, and he undoubtedly knew that the term "inherit" did not apply to a person taking under a will; that he had the clearest power of expression and was the finest rhetorician witness ever met; that witness knew the caveatee

Luke Devlin quite well, first as an enlisted soldier, then as a
60 messenger, and afterwards as a civilian clerk of the first class; that the relations of the testator were the usual relations between an officer and a messenger; that witness can say nothing unfavorable of said Devlin while under witness' observation.

And thereupon the said witness was interrogated on behalf of the caveators and answered as follows:

"From your observation of him, what was his manner towards men in such situations as Gen. Grant and Gen. Sherman?

Mr. DARLINGTON: I object to the question.

Mr. WORTHINGTON: I am now asking for his characteristics and not for his opinion.

Mr. DARLINGTON: It is utterly irrelevant and immaterial, and these would be sufficient grounds for the objection if there were not a dozen others.

The COURT: How is that material?

Mr. WORTHINGTON: It is material on the ground I have just stated—that it is not likely that anybody, especially a man of Gen. Holt's characteristics and deference towards his superiors, would have asked them to become witnesses to his will. Your honor knows, and we all know, that it necessitated their coming down to the probate court and being examined as witnesses, in the first place, when the will was tendered for probate, even if there was no objection to it. If a controversy arose, they would have to come into court and be examined and cross-examined. I do not know how it may strike your honor or the jury, but it does strike us as a very remarkable and unusual thing that Judge Holt should have selected such
61 witnesses, and that, along with the other surrounding circumstances, this is one circumstance which should go to the jury on the question of whether this will is a forgery or not.

(After full argument the court said:)

The COURT: It seems to me that the characteristics of the testator may be material on several questions that may arise during the progress of this trial and in the argument to the jury, and that these characteristics are therefore material. It is possible that different inferences may be drawn from the testimony that may be given in answer to such a question, but that would not of itself indicate the impropriety of allowing the question to be put and answered. While the question appears to be aimed at circumstances that may be remote, and that in themselves have very little weight, yet I cannot say at the present time that these circumstances may not be material. I will overrule the objection.

Mr. DARLINGTON: We will save the point.

By Mr. WORTHINGTON:

Q. Now, Colonel, will you state, from your personal observation, what were the characteristics of Judge Holt when you were associated with him in the sixties and early in the seventies as regards his treatment of his superior officers, such as Gen. Sherman and President Grant?

A. He was a man of retiring modesty and great refinement of feeling. So far as his treatment of his superiors was concerned, I saw him but seldom in their presence. On New Year's day, when the officers of the army stationed in the city make their official visit to the President, I recall having been there with him on at least one occasion."

62 *3rd Ex.*

To which ruling of the court in overruling the objection to the said interrogatory and permitting the witness to answer the same the caveatees then and there duly excepted, on the ground that the same was irrelevant and immaterial, and that the said testimony was incompetent for the purpose for which the same was professedly offered; but the court overruled the said objection and admitted said evidence; to which ruling and admission the caveatees then and there duly excepted, and said exception was noted at the time upon the minutes of the court.

Upon cross-examination said witness testified that he had never discussed with Joseph Holt the meaning of the word "inherit" nor any question of the common law; that he could not swear the signature was not genuine except when added to such a document.

63 Thereupon the caveators further produced as a witness on their behalf HORATIO KING, who testified that he knew testator from 1859 to the time of his death, was acquainted with his handwriting, and corresponded with him frequently from 1863 to 1888, and that in his opinion the handwriting of the will was not that of the testator, though he could not say the signature was not the testator's if on a letter to witness.

64 The caveators produced as a witness on their behalf EMILY EDSON BRIGGS, who testified that she became acquainted with testator during the second month of the administration of President Andrew Johnson and corresponded with him and visited him frequently before his death, and that in her opinion neither the
65 text nor the signature of the will are in testator's handwriting.

Thereupon the said witness was further interrogated on behalf of the caveators, and testified as follows:

Q. Were you acquainted with any of the Throckmortons—Major Throckmorton or Mrs. Throckmorton, the major's wife?

A. I have known them in years *apst*, but not intimately.

Q. What have you ever observed as to Judge Holt's treatment of either of them, and what, if anything, have you heard him say in respect of them or either of them?

Mr. DARLINGTON: I object to that unless the time is fixed either anterior to the date of the will or contemporaneously with it. What he may have said or thought about them in years after the making of the will would throw no light upon the question of its genuineness.

Mr. WORTHINGTON: We are offering this both upon the question of the genuineness of the will and upon the question of revocation.

* * * * * * *

Mr. WORTHINGTON: I presume we might as well go into this question now, if your honor cares to hear from us on the subject. We contend that this evidence is admissible upon two grounds: First, that it is competent as evidence of the declaration of the testator with reference to his will and the distribution of his property as tending to show his relations both with the persons named in his will and those who would come under the law, take his property, if he had died intestate, and we submit that these declarations are competent, whether they were made before, at the time of, or after the date of the will.

66 Mr. DARLINGTON: Only the last proposition is in dispute. And after extended argument—

The COURT: Mr. Darlington, do you claim that this section of the law on page 562 of Abert's Compilation, taken from 29 Charles II, relating to the alteration or changing of any will of personalty, is exclusive, and that a will of personal property cannot be revoked in the manner provided with relation to real estate?

Mr. DARLINGTON: No, sir; I do not claim that. My claim about that is, if this testimony were of express declarations of the testator that he meant to change his will to the detriment of these parties it could not be received, and, *a fortiori*, that mere declarations of how he felt cannot be received.

The COURT: This provision to which reference has just been made and is relied upon by counsel for the caveatees in argument appears to me to have reference solely—and I think that is conceded now, as I understand Mr. Darlington—to a revocation of a will of personalty in a certain way. That provision is:

"No such will shall be repealed nor shall any clause, devise, or bequest contained in said will be changed by any words or word of mouth only except the same be in the life of the testator committed to writing," &c.

The object of this testimony, as I understand it, which is sought to be elicited by a question put to the witness, to which objection has been made, and which has brought forth this argument, is to adduce such circumstances as will not only indicate that it

67 was the purpose of testator to revoke this will, if the will was ever made by him, but also, by showing the relations of the parties, to indicate that it was not his intention at the time of his decease that his property should go in this way. It appears to me to be clear and beyond dispute that if this will in its present condition had been found in the possession of the testator there would not only be a presumption of fact that this burning and mutilation was done by him with intent to revoke the will, but that evidence in aid of that presumption would be received in behalf of those who contest the will, and that evidence as against that presumption would be received in behalf of the caveatees, the propounders of the will.

So if the will had disappeared, if proof had been given that such

an instrument had been executed during the lifetime of the testator and it was not found after his death, the presumption would arise of revocation by him. In aid of that presumption this class of evidence would be received both *pro* and *con*. If the instrument had turned up after his death, mutilated in this form, in the hands of some third party, then the presumption would be that the testator had not mutilated it or directed it to be mutilated, and that this intention of revocation had not existed and did not exist at the time of his death.

This situation is unique. It is conceded that the presumption is that the will was in the possession and custody of the testator at the time of his death, but it is not conceded that at that time it was in its present condition. There is no evidence to indicate that it was found in the possession or custody of the testator or among his papers after his death, but it turns up in its present condi-
68 tion in some peculiar manner, unaccounted for, coming from some unknown source, transmitted anonymously to the register of wills, its possession after the death of the testator totally unaccounted for. There can be no presumption that some third person mutilated it, and I think there can be no presumption that it was mutilated by the testator.

Certainly, unless it appears that this will came from some other source than from some one who had picked up the testator's papers, if it does not appear that it came from the custody of some one who would have some interest in mutilating it, it does not appear to me that there can be any possible presumption that it was mutilated by some third party.

In the absence of presumption either way, where are we left? Undoubtedly this burning and tearing off of the seal, the separation of the different portions of the paper, was done by some one with some intent. In the absence of direct proof as to where this will came from, and with the intimations that no one knows where it did come from, in order to attain the ends of justice it seems to me all evidence should be received that would tend to throw any light upon this whole matter. Evidence of the declarations of the testator that would be either in favor of the will and its provisions or against it, evidence of his relations with the beneficiaries under the will or with his family, who would be his heirs-at-law; evidence of any declarations that would indicate any purpose that he had with reference to the will, must be received in aid of these circumstances that here is an instrument which is alleged to be the last will
69 and testament of Judge Holt, as to which evidence has been offered, which is produced in this mutilated condition. There ought to be some way of explaining it. These circumstances being admissible in evidence under other conditions, where a will turns up in a mutilated condition in the possession of the testator or where it is lost, and such evidence being competent, I think, where it turns up in the possession of a third party in a mutilated condition, both *pro* and *con.*, it seems to me it must be competent in this situation and under these peculiar circumstances.

I therefore overrule the objection.

Mr. DARLINGTON: I reserve an exception.

I also object on the ground that the question relates not to any beneficiary of the will, but to the whole family of the beneficiary, the father and mother. I submit that would not be competent.

By Mr. WILSON:

Q. State whether or not you at any time had any conversation with Judge Holt in which the Throckmortons were mentioned; and, if so, state as nearly as you can when it was and what occurred.

Mr. DARLINGTON: When we adjourned yesterday the question was pending whether or not that inquiry should be confined to the beneficiary under this will or whether it should extend to the Throckmortons generally. I submit that it is incompetent to go beyond at least the persons mentioned in the will.

The WITNESS: I have only six words to answer. Six words includes it all.

70 Q. Can you tell us about the time of this conversation?

A. As near as I can remember it, it was some time in 1881. I think so, but I will not give dates positively, because only events stick in my mind, but not dates, but as near as I can recall——

Q. Now state what the conversation between you and him was.

Mr. DARLINGTON: One moment; we have that question pending.

The COURT: First, to whom did it relate?

Mr. DARLINGTON: The Throckmortons, the question is.

Mr. WILSON: The Throckmorton family.

The COURT: I asked merely that Mr. Darlington might have the benefit of his objection. I am prepared to rule that the conversation if it related to Major Throckmorton or Mrs. Throckmorton or his daughter is admissible.

Mr. WILSON: That is, as I understand it, what it relates to.

The COURT: Do you except?

Mr. DARLINGTON: Yes, sir; I would like to have the grounds of my objection stated under the rule. I object on the ground that it is not competent to prove revocation at all by mere proof of changed relations or the sentiments of the testator towards the parties after the will is made. I object, secondly, on the ground that testimony as to any change of sentiment or feeling upon the part of the testator towards any other than the beneficiary of the will would not be evidence which ought to go to the jury as a basis for

71 inferring or presuming revocation.

Mr. WORTHINGTON: I would like to have your honor understand that we are not asking at this time for any ruling as to whether declarations concerning Major Throckmorton would be admissible after his daughter became of age, but the date fixed by the witness for this conversation is several years before Miss Throckmorton became of age, for she gave us her birthday herself, and it was at a time after Gen. Holt had died, when the one-half of his estate would have gone into the hands of Major Throckmorton as a trustee for his daughter.

The COURT: It appears to me that if the evidence is competent as to the beneficiary—if it relates exclusively to her—then if it relates to the family, or is more immediately directed to the father or mother, yet it may remotely affect the beneficiary, and the objection then would go merely to the weight of the evidence. That is a question for the jury.

Mr. DARLINGTON: My objection is that it would be too remote for that purpose. We reserve the exception.

By Mr. WILSON:

Q. Now you may state just what occurred between you and Judge Holt in relation to the Throckmortons—what you said and what he said.

A. Well, I simply asked a question. I cannot remember what I asked—my own question—because his answer made such a deep impression on me—upon my mind—that it excluded everything else. I simply, I think, inquired after the health of the Throckmortons, or perhaps I might have said, "Are they in town?" 72 or something of that nature, and he simply—he was standing at the time I was asking the question—and he simply turned upon me with such an air and such a determination and said, "I do not know the Throckmortons," and that was the only time in my life that I ever heard him mention the name of Throckmorton. We never had any conversation—we never gossiped—and that showed me that I must not speak the name of Throckmorton.

4th Exc.

To the admission of which evidence the caveatees, by their counsel, objected upon the ground above set forth; but the court overruled said objection and admitted the same; to which ruling of the court and the evidence so admitted the caveatees then and there duly excepted, and said exception was noted at the time on the minutes of the court.

Thereupon the said witness was further interrogated and testified as follows:

"Q. If at any time after that you were with him when you met Major Throckmorton, or you and he met Major Throckmorton, state when that was and where it was.

A. It was at a levee at the White House. As near as I can remember it was—I cannot, as I said before, pretend to give dates. I only remember the incident, and I remember that Major Throckmorton came before us, because——

Q. State how you and Judge Holt were.

A. I was on Judge Holt's arm. He had asked me if I would go to the President's levee with him, and I had his arm. Major Throckmorton came up and shook hands with me and turned to shake hands with the Judge, and he turned himself around so that he turned his back to the Judge.

Q. Turned his back to whom?

73 A. I mean he turned his back to the Major. I was so frightened I had to sit down. He turned his back and never took his hand, but left the Major with his hadn extended, or it dropped very suddenly, and I was so frightened I had to sit down. I was so astounded—so astonished—and that made the impression upon my mind. That is the only way I know anything of his relations with the Throckmortons."

Said witness further testified that the incident in question occurred, according to her best recollection, during the administration of President Arthur and near the close of his administration.

5th Exc.

To which testimony the caveatees objected on the ground that the same was incompetent upon the question of the genuineness of the will because long subsequent in date thereto, and that it was incompetent upon the question of revocation for the reason that the revocation of a will cannot be shown or inferred from testimony of such character; but the court overruled said objection and admitted the testimony; to which ruling and admission the caveatees then and there duly excepted, and said exception was noted at the time upon the minutes of the court.

On cross-examination said witness further testified that she didn't remember the exact question in reply to which the testator said he did not know the Throckmortons; that the question may have been, "How is Mrs. Throckmorton?" that her knowledge of the Throckmortons and their relations to the testator was only through Mrs. Throckmorton, Sr., and that she asked about their health because she knew the elder Mrs. Throckmorton was acquainted with the testator.

On cross-examination the witness stated several particulars in which she was of opinion that the letters in the will differed from Judge Holt's writing, but said she judged more from the general appearance than from details; and upon redirect examination, against the caveatees' objection and subject to their exception, she further testified that she did not form her opinion as to whether Judge Holt wrote the paper from the mere handwriting alone, but that it was the composition.

74 Said witness was further interrogated and testified as follows:

Q. Did you at that time have any talk with Judge Holt in respect of wills?

A. I did.

Q. Tell us what that was and when it occurred. First tell us where it was.

A. It was at his own house. I went over there. I was very much startled at the newspaper report that Mr. Tilden's will, who I supposed was the greatest lawyer in the country, could be broken, and it so stoood upon my mind that I went over to ask the Judge about

my own will. It is very hard to remember exactly, as I feel I must under oath——

Q. Give the conversation as nearly as you can.

A. As nearly as I can?

Q. That is all we expect.

Mr. DARLINGTON: I may have to object to this, but until I hear the answer I do not know what it is. I want to reserve the right to object.

Mr. WILSON: You can reserve all the rights.

By Mr. WILSON:

Q. Now, go on, Mrs. Briggs.

A. I asked him if he thought he could make a will that could not be broken, like Mr. Tilden's, and I remember——

Mr. DARLINGTON: I object to any answer to that question. It is purely argumentative.

A. Well, I cannot remember——

Mr. DARLINGTON: It is immaterial and collateral.

Mr. WORTHINGTON: It is only preliminary to indicating his own testamentary disposition.

75 Mr. WILSON: Just how it came about.

The COURT: What answer did he give?

Q. What did he say?

A. Well, he first told me that if I was going to make a disposition of any piece of my property to do it before I passed away. Then I would be sure; it would be done and be permanent. "But," he said, "in my own case my nephew, my brother's son, will attend to my affairs and I know it will be done all right." I know before the conversation ended he said "Washington." I did not know his people. I did not know Washington Holt, but he said, "He will attend to my affairs and I know it will be all right."

Q. I wish you would state as nearly as you can the date of that conversation.

A. About the time that it appeared in the newspapers that Mr. Tilden's will would be or had been broken.

Mr. DARLINGTON: Can we agree when that was?

Mr. WORTHINGTON: We can get at that.

Mr. DARLINGTON: He died in 1886.

Mr. WORTHINGTON: He did die in 1886?

Mr. DARLINGTON: Yes; a year after Cleveland's first inauguration.

Mr. WILSON: Then the contest over his will was subsequent to that.

Mr. WORTHINGTON: It was in litigation for a good while, and the court of appeals did not finally decide on it until several years after his death.

Mr. WILSON: That is a date that we can fix.

It is conceded by counsel that the court in special term, in New

York, declared in favor of the validity of Mr. Tilden's will in October, 1888; that the court in general term set aside this judgment in November, 1888, and declared Mr. Tilden's will invalid, and this latter judgment was affirmed by the New York court of appeals in 1891.

76 Mr. DARLINGTON: I object to the testimony on this point on the ground that if it is offered for the purpose of proving the contents of a lost will the factum of such a will cannot be proved by declarations of the testator. In the second place, the legal presumption is that the will was revoked if not found, and if found the will itself must be produced. Parol declarations of this character are inadmissible as a basis for proving revocation.

The COURT: The instrument that has been offered for probate and that is in controversy here is, as I remarked yesterday and as every one has noticed, a most peculiar instrument in many particulars. It has been either cut or torn apart. If it ever had a seal, that seal has been removed. It has been burned in spots and the edges have been burned, and it is admitted that the presumption is not that it was in this condition, but in the possession of the testator at the time of his death. It may have been in this condition. It appears to me this evidence is competent for the purpose of indicating if this will ever did have an honest existence (which is a question here, one of the questions); that it was revoked by cancellation, obliteration, or burning, and that such act was the act of the testator. It does not directly show it, but it is a circumstance of which I think the caveators are entitled to have the benefit.

Mr. DARLINGTON: If this testimony tends to prove anything, it would be that there was a later will, in which Washington Holt was named as executor. Death without a will would not leave the affairs of Judge Holt in the hands of Washington Holt for administration.

77 The COURT: No.

Mr. DARLINGTON: The tendency of this testimony, if it proves anything at all, is to prove that there was a later will, in which Washington Holt was executor, and the presumption from the non-production of this later will is that, if it ever existed, it has been revoked. It seems to me this is incompetent.

The COURT: The evidence has not yet disclosed who the next of kin are. If Washington Holt was the nearest relative, the nearest male relative, he would have the right to administer, would he not?

Mr. DARLINGTON: There has been no evidence upon the point, but in the opening statement for the caveators, the statements made in which are evidence, it is stated that he had three brothers and a sister.

Mr. WORTHINGTON: It was stated that he left two brothers and a sister; that Washington Holt was the only child who survived one of those brothers, and who would, if Joseph Holt died intestate, be entitled to one-third of his estate; but the other two-thirds would, as to one of them, be divided into two parts for the two children of a sister, and the remaining third divided into a number of parts among several daughters and sons of the other brother.

The COURT: No brothers and sisters?

Mr. WORTHINGTON: No; no brothers and sisters. Mr. Washington Holt, it will appear, stood in as near relation to Judge Holt as anybody living at the time of his death and for a great many years before. In other words, his heirs were nephews and nieces,
78 and Washington Holt was one of his nephews.

Mr. DARLINGTON: But this distinguished, exact, and remarkable lawyer, as Judge Holt is described to have been, must have known that one nephew had no precedence over another, and such a remark could only have meant that there was a will existing in which he was executor.

Mr. WORTHINGTON: Yes; that is our claim.

Mr. DARLINGTON: And the legal presumption of its non production is that it was revoked, so that this evidence would not tend to prove anything and would not be admissible here.

The COURT: It would have some tendency to prove that he thought this will, if it ever existed, had been revoked, or it might tend to prove——

Mr. WORTHINGTON: My friend prefaced his objection by saying that if this testimony was offered for such and such a purpose it was incompetent, etc. We would like to have it understood that we offer it for both purposes—both on the question of forgery and on the question of revocation. If it is competent for either purpose, of course, it must go in now, and then any question as to its effect would have to be raised on the instructions.

Mr. DARLINGTON: I submit also that it is not competent on the other ground, the question of forgery.

* * * * * * *

The COURT: The objection is overruled.

Mr. DARLINGTON: We note an exception.

Mr. WORTHINGTON: It is understood that the exception is taken as though the objection were made before the question was answered.

6th Exc.

To the admission of which alleged declaration of the tes-
79 tator the caveatees objected upon the ground set forth in the foregoing excerpt of the proceedings; but the court overruled the said objection and admitted the said testimony; to which ruling and admission the caveatees then and there duly excepted, and said exception was noted at the time upon the minutes of the court.

Thereupon it was agreed and stipulated by counsel for the caveators, in the presence of the court, that any further testimony that might be offered on behalf of the caveators as to any declarations made by said Joseph Holt after February 7, 1873, as to his testamentary intentions should be deemed to have been admitted subject to the objection and exception of the counsel for the caveatees upon the grounds set forth in their exception last noted above.

Thereupon counsel for the caveators further gave evidence to the jury tending to prove that between the years 1884 and 1893 said

Joseph Holt on several occasions told Washington D. Holt that he, Joseph Holt, had made him, said Washington Holt, his executor; that said Joseph Holt during the same period on several occasions informed said Mary Holt and her mother, Vanda Holt, that they would be much better off after his death; that they would then go to Europe; that said Mary Holt must become proficient in French, so that while in Europe she could act as their interpreter; that during the same period he told the servants in his house on divers occasions that said Washington D. Holt would have charge of his affairs after his death, and about three months before his death he told Martha Scott, one of said servants, that when he died he wanted a certain flag which was in a trunk upstairs wrapped around his body, and said he told her about the flag because his funeral
80 was all in his will and his will would not come out until after he was buried, and that that was why he told her about the flag.

The witness Emily Briggs further testified, in reply to questions addressed to her on behalf of the caveators, that she was a journalist by profession and had made literature her business in life; that she had received instruction from said Joseph Holt in the line of composition in the English language; that she had gone to him and asked his advice about certain paragraphs in the series of articles written by her, because she had been informed he was a master of the English language.

Thereupon said witness Briggs was further examined on behalf of the caveators and testified as follows:

Q. In the opinion you have expressed as to whether Judge Holt wrote this will or this paper which is called his will, do you form your opinion, in any respect, upon any matter except the mere handwriting?

A. Indeed I do; it was the composition.

Mr. DARLINGTON: I object.

The WITNESS: He was my master—my teacher.

Mr. WORTHINGTON: This witness has testified that she has, in a large measure, made literature her business in life, and that she took lessons, in the line of composing in the English lan-
81 guage, from Judge Holt and thereby became particularly well qualified to express an opinion as to whether that paper is in his writing or not.

Mr. DARLINGTON: Do you say that she took lessons from him?

Mr. WORTHINGTON: She did; she went to him for the purpose of being taught.

The WITNESS: That is just what I did. When I wrote the Andy Johnson letters, that went from Maine to California, I knew I must do it right. I cannot tell you the stress I was under in writing these articles. I went to Judge Holt and asked him about certain paragraphs, to have him tell me if I made a mistake, because I was the only woman in this country who was doing that work and I felt that I represented my whole sex. I went to him because I was

told by Ben. Perly Poor and my husband that he was a master of the English language and that he would teach me to write.

Mr. DARLINGTON: I object to all this.

Mr. WORTHINGTON: She has already testified that she made writing her business, and that she went to Judge Holt to acquire his style and to get information from him about how to write. I submit that she is particularly well qualified to express an opinion when a document of this kind turns up after his death as to whether he wrote it.

By Mr. WORTHINGTON:

Q. Let me ask you if you recollect anything as to his habits regarding punctuation.

A. I only know that he was very particular about every sentence. He told me how to dress an idea so that it would stand out,
82 and I got the name of being a fine writer from the knowledge I received from him; he taught me.

Mr. WORTHINGTON: It does seem to us that the opinion of such a witness ought not to be excluded from the jury.

Mr. DARLINGTON: Of course, the grounds of objection are that the question of opinion evidence is based upon well-established principles, and that the opinion of people as to phraseology, the construction of sentences, and composition has never yet been recognized as a subject upon which courts could receive the opinions of witnesses.

The COURT: Do you know whether the question has ever arisen in any reported case?

Mr. DARLINGTON: I do not. I imagine this is the first time such testimony has been offered.

The COURT: Since my ruling the other day I have been trying to get further light upon this subject. I think it sufficiently interesting to have it reargued.

And thereupon the foregoing objection was fully argued by both counsel for the caveatees and caveators.

Pending the argument and before the ruling of the court counsel for the caveators said:

(Mr. WORTHINGTON:) We are not now, whatever may come hereafter, asking your honor to rule that anybody may give an opinion as to whether this is a production by Judge Holt wholly from his style or as a grammatical composition. We are asking that this witness may be allowed to say that her opinion is based both upon the handwriting, the composition, and all there is in it.

Mr. DARLINGTON: If the one thing is not competent can the other make it so?

83 Mr. WORTHINGTON: If the opinion of this witness is, as she has stated, based partly upon handwriting and partly upon the composition and style, then, according to my brother's argument, it must be excluded entirely, because she cannot separate the thing in her own mind.

After further argument—

The COURT: Mr. Worthington, as I understood, suggested a limitation to the inquiry, so that the opinion of the witness would be confined to these two elements—the composition and the handwriting.

Mr. DARLINGTON: I move to strike out so much of the last answer of the witness as relates to opinion of composition.

The COURT: The question is a very interesting one. It is novel, but, on the whole, I have reached the conclusion that I will admit it to the extent that has been indicated.

Mr. DARLINGTON: Do you offer this lady as an expert or otherwise?

Mr. WORTHINGTON: Not as an expert in the proper sense, but simply as a person may testify as to handwriting from being acquainted with it, and also as to the other matter.

Mr. DARLINGTON: I make the motion on the ground that the witness' testimony as to the opinion of style of this document and the likelihood that it would have been written by Judge Holt as a matter of rhetoric or composition is conjectural, remote, intangi-
84 ble, and is opening up an indefinite and wide field of inquiry, too wide for judicial investigation; that it is not a class of opinion evidence admissible under the rules or principles of evidence; that, the paper being present in court, its composition and style, in so far as they are competent questions at all, are questions for the court and jury or the court or jury, and not for the opinion of a witness; that such lines of testimony are dangerous, against public policy, take away the security afforded by the statute to testators and those interested in their wills, and render it possible to overturn any will by testimony of a vague, indefinite, and irrefutable character.

7th Exc.

To which evidence the caveatees, by their counsel, objected on the grounds above set forth; but the court overruled said objection and admitted the said testimony; to which ruling and admission the caveatees then and there duly excepted, and said exception was noted at the time upon the minutes of the court.

And the said witness, under the like objection of the caveatees and subject to their said exception, further testified that her opinion as to the genuineness of the said paper-writing was based both upon the handwriting and the composition, and that her reasons for believing the will not genuine were "more the composition, as well as the writing."

Said witness further testified, on recross-examination, that the literary productions of the testator that she had studied were his Charleston speech, made in 1865, his letters to her, and his
85 conversations with her; that his principal characteristic in style of composition was forcibleness; that he had a clear, concise, simple, and forcible manner—not verbose; that he used few superfluous words in his letters to her—never a word that the sentence could be made complete without.

The caveators further produced as a witness in their behalf WILLIAM WINTHROP, who testified that he practiced law from 1854 to 1861, since which time he had been connected with the War Department; he had been an officer in the Army of the United States and for many years an assistant judge advocate; that he served under the testator, who was judge advocate general, from 1864 until the testator's retirement, which occurred in September, 1875; that he assisted Judge Holt in preparing contracts, deeds, leases, acts of Congress, and annual reports to Congress, and had seen his style in other papers, like addresses that had been published; that he saw him sign his name frequently and saw his handwriting in official papers and a limited correspondence; that he regarded him as an able lawyer, not only as to common-law practice, but as a constitutional lawyer, which witness thinks was his strong point; that Luke Devlin was first a messenger in the judge advocate general's office and then a clerk, who copied Judge Holt's opinions; that his relations with Judge Holt were very friendly and kindly, but his relations were those of a messenger, and witness saw no indication of social or business relations between them; that while the will in controversy bears considerable resemblance to Judge Holt's handwriting, witness' decided impression is that it is not his handwriting; that, speaking of the handwriting, irrespective of any other consideration, his decided impression is he never wrote it.

And thereupon the witness was interrogated and testified as follows:

Q. I will ask you, speaking from the handwriting and the composition, style, and punctuation of the whole paper as
86 you see it there, what is your opinion as to whether or not Gen. Holt was the producer of that document?

A. I should say that he was not.

Mr. DARLINGTON: I suppose it is understood that our objection applies all the way through. I suppose it is not necessary to reiterate it each time.

The COURT: You object to any question or answer, I suppose, where either the question or answer is addressed, in whole or in part, to an opinion based upon composition, etc., instead of handwriting?

Mr. DARLINGTON: Yes, sir; on the ground that such an opinion is conjectural and misleading, and also upon the other grounds more elaborately specified in the argument on the questions previously objected to.

Mr. WORTHINGTON: Your honor used the expression "in whole or in part." I have not yet asked any witness to express any opinion on this document based on composition alone.

The COURT: So far you have not.

Mr. WORTHINGTON: I have asked him to express his opinion on the handwriting alone and then on the handwriting and composition taken together.

Mr. DARLINGTON: I object to any question which embraces in it the question of phraseology or composition.

Mr. WILSON: Let it be understood that whenever such a question is asked their objection is noted to it.

8th Exc.

To the admission of which testimony the caveatees objected upon the grounds set forth; but the court overruled said objection and admitted the said testimony; to which ruling and admission the caveatees then and there duly excepted, and said exception was noted at the time on the minutes of the court.

87 Said witness further testified that he should be in very great doubt as to the genuineness of the signature and would not like to say more positively; that said Joseph Holt's style was a little formal, florid, and flowery; that he used no superfluous words, but illustrated a good deal.

Thereupon said witness was further interrogated on behalf of the caveatees, and testified as follows:

"Q. Let me call your attention to the use of the word 'inherit' in that paper, in the middle paragraph. From your knowledge of Gen. Holt's characteristics and his way of expressing himself, what do you think as to that being his expression?"

9th Exc.

To which interrogatory the caveatees then and there objected upon the same grounds of objection as are specifically set forth in the foregoing 7th and 8th exceptions; but the court overruled
88 the said objections and permitted the witness to answer that he did not think the testator would use that expression.

To which ruling and admission of evidence the caveatees objected; but the court overruled said objection and admitted the said testimony; to which ruling and admission the caveatees then and there duly excepted, and said exception was noted at the time upon the minutes of the court.

Said witness further identified as in testator's handwriting an earlier will of the testator, dated the 9th day of April, 1848, which will was thereupon offered in evidence by counsel for the caveatees and is in the words and figures following:

"I, Joseph Holt, a citizen of Louisville, State of Kentucky, do make and publish this my last will and testament, hereby revoking all others, heretofore made:

Item 1. To my beloved mother, I give the sum of *five thousand* dollars—

"2. To my sister Elizabeth Sterett I give the sum of seven thousand dollars, to be by her enjoyed and held absolutely in her own
89 right, exclusive of & free from the control of all & every person—And I request my friend & relative Wm. Sterett, (who by operation of law will be the trustee under the trust hereby created) to see that the interest upon this sum is punctually paid semi-annually to my said sister—

"3. To my brother James I. Holt, I give the sum of thirty-five hundred dollars—I direct, however, that my executor shall pay out of this, any debt or debts which may yet remain due by the late firm of J. J. Holt & Co.—and that the balance of the sum hereby bequeathed, shall then be paid to my said brother—

"4. To my brother Thomas Holt, I give the sum of fifteen thousand dollars—

"5. To John & Washington Holt, children of my brother Thomas, I give each the sum fifteen thousand dollars—

"6. To my brother Robert S. Holt, I give the sum of thirteen thousand dollars—

I also devise unto my said brother Robert, the house and lot owned by me in the city of Louisville, situate on Walnut street—being the same conveyed to me by Jno. J. Jacob—& for some years occupied by me as a residence—

I also give & bequeath unto my said brother Robert, all my household & kitchen furniture & wares of every kind, and my silver plate—except so far as some of the foregoing articles may be hereinafter specifically disposed of to other persons—

7—To Joseph Holt, infant son of my brother Robert, I give
90 the sum of four thousand dollars—

8—To Annie Holt, infant daughter of my brother Robert, I give the sum of fifteen hundred dollars—

9—To my brother Robert, I give the sum of fifteen hundred dollars—*in trust* that he will place the same at interest—that out of the principal & the interest thus accruing, he will pay to Miss Elizabeth Hynes, one hundred & twenty dollars per annum, for five years—(provided she shall so long live & unmarried) & and at the expiration of said five years he shall pay her the balance which shall remain of said principal sum & interest—if however she should marry before the expiration of five years from my death, then the payment of the 3d hundred & twenty dollars per annum will be continued up to her marriage & upon that event the balance of the principal & interest shall be paid to her—should she die without having married before the expiration of said five years, then the balance of said principal & interest remaining at her death shall revert and constitute a part of my estate—

10—To Cuthbert H. Bain, I give the sum of *one* thousand dollars—

11—To my aunt Rebecca Stephens, I give the sum of one thousand dollars—

12—To Miss Sally & Miss Frances Harrison, I give each the sum of five hundred dollars.

91 13—To my friends James O. Harrison & Jno. M. Chilton, I give each the sum of fifteen hundred dollars—

14. To Thomas Hicks, a little orphan boy now living in the family of my brother Thomas, I give the sum of five hundred dollars—

15 I direct that my slaves, to wit, Joshua, Richard & Sandy shall be emancipated immediately after my death—and that my executor shall pay to each of them the sum of two hundred dollars, in four semi-annual payments of fifty dollars each—the first of which shall be made immediately after their emancipation—Provided, however,

that should my executor believe that the interests of all or any of said slaves demand an earlier payment of said legacy, then he is authorized & requested to make such payment accordingly—

16. I direct that my slaves, Joanna, Julia & Louisa, shall be emancipated at the following times, when I suppose they will be each about twenty or twenty-one years of age—viz—*Joanna* in January, eighteen hundred & fifty six—*Julia* in January eighteen hundred & sixty four—& *Louisa* in January, eighteen hundred & sixty three—

17. To my brother Thomas, I give & bequeath sa-d slaves, *Joanna & Julia* until the time specified above for their emancipation—

18. To Candace, a free woman of color, & who is the
92 mother of Louisa, I give & bequeath the said Louisa until the time specified as above for her emancipation—Provided, however, that should Candace die before January, eighteen hundred & sixty three, then after her death, I give & bequeath the said Louisa to my brother Thomas, until the time aforesaid fixed for her emancipation—

19. To the said Candace, I also give the sum of fifty dollars, per annum during her life, & charge the payment of the same upon the house & lot hereinbefore devised to my brother Robert—

20. To my brother Robert, I give the further sum of four hundred & fifty dollars in trust—that is to say, one hundred & fifty dollars in trust for each of the said slaves, Joanna, Julia, & Louisa, and direct that he shall place this sum at interest, and upon the emancipation of said slaves he shall pay to each of them in succession the said hundred & fifty dollars, & the interest thereon accrued.

21. I give & bequeath my library to my brother James & Robert jointly—

22. To Miss Sarah Harrison I give the travelling dressing case which belonged to my late beloved wife, together with its contents, except so far as they may be herein otherwise disposed of—

23. To Miss Elizabeth Powell, I give & bequeath the diamond ring owned & worn by my late beloved wife.

93 24. To my friend Jno. M. Chilton I give the gold watch, which he kindly presented to me many years ago.

25. To Cuthbert H. Bain I give & devise all my title & interest in & to a tract of land situate in Crittenden County, N y, known as "Hurricane Island"—said interest being one undivided third part—

26 I also give & bequeath to the said Cuthbert a mahogany work-stand owned originally by his mother, & and by her presented to the late Mrs. Holt.

27. To my brother Robert, I give my diamond breast pin—

28. To the American Tract Society instituted in the city of New York, I give and bequeath the sum of one thousand dollars to be applied to the charitable uses and purposes of said Society—

29. To my brother Robert S. Holt, I give & bequeath the sum of two thousand dollars in trust that he will appropriate one thousand dollars of the same to the use & benefit of the orphan Asylum existing in the City of Louisville under the care and patronage of the episcopal church, and that he will appropriate the remaining thou-

sand to the orphan asy,um existing in said city under the care & patronage of the Roman Catholic church—

94 30—I direct the legacies hereinbefore named, to my mother, sister, brother Thomas to be paid to them in Kentucky bonds which I now hold at par—the coupons *due* at the moment of payment, to be clipped off & to constitute a part of my estate—& I advise my said relatives to retain those bonds as the most convenient & safest investment which they can make—

31—Whenever I may die, I request my executor if practicable to have my body interred beside that of my beloved wife—

32. I hereby appoint my brother Robert S. Holt of yazoo county, Mississippi, sole executor of this my last will & testament—& request that he may be permitted to qualify as such without giving the bond & surety usually required—

In testimony of the foregoing will all of which is written with my own hand, I hereunto sign my name & affix my seal this ninth day of April, 1848

(Signed) J. HOLT (SEAL.)

Said witness, upon examination of the said will, thereupon admitted that in the names "James I. Holt" and "Robert S. Holt," repeatedly occurring in said will, dashes followed the words "James" and "Robert," similar to those following "Josephine" and "Holt" in the will in controversy; that the character "&" was frequently substituted for "and;" that the words "Episcopal Church" were spelled without capitals in the will of 1848, and the word "church" with a small "c" in "Roman Catholic Church."

95 Thereupon the caveators, to further maintain the issues upon their part joined, produced as witnesses W. H. Dobson, Joseph Fought, Samuel Hodgkins, Addison A. Hosmer, Emily V. Miller, Francis G. Saxton, Arthur Schatz, Albert L. Smith, Washington D. Holt, Mary Holt, Lockie W. Iglehart, and Charles Strothers, who gave testimony tending to show that, in their opinion, the said paper-writing was not in the handwriting of said Joseph Holt, and that it was not, in the opinion of some of said witnesses, even a good imitation thereof, and the witness Hodgkins testifying that every word and letter, he was inclined to say, showed a departure from the said Holt's general handwriting, though he had not examined all the letters all the way through.

Thereupon the caveators produced as a witness on their behalf ROBERT DUTTON, who testified that he was a Star reporter; that he was present at the office of the register of wills on the day that the will reached that office and examined it; that he was in doubt whether the lower fold of the paper, containing the signature, was then separated from the upper portion of the paper or not; that he looked at it with a magnifying glass the day following and was still in doubt, not being satisfied whether it had been separated or otherwise.

FREDERICK T. SCHRADER, another witness produced on behalf of the caveators, further testified that he had examined the paper in the office of the register of wills on the 28th day of August, 1895, being the day after it reached the office of the register of wills, and concluded that the lower fold was separated.

SMITH THOMPSON, a further witness called on behalf of the caveators, testified that he was an employee of the register of wills' office for the past nine years; that he was present in the
96 office when the will in controversy was received there; that he paid particular attention to its condition when received, and distinctly observed that the lower fold was intact and had not then been severed from the body of the will; that some one raised the question whether the signatures had not been pasted to the body of the will, which led witness to examine it particularly, and he found that the paper had not been severed.

The caveators further produced as a witness on their behalf LEVI P. WRIGHT, who testified that he was register of wills for the District of Columbia when the will in controversy was received at that office; that it came in the morning's mail on the 26th day of August, 1895, sealed up in an envelope, with a piece of pasteboard enclosed with it; that the envelope contained nothing except the will and the pasteboard; that within two or three days after its arrival he had the will and envelope enclosed in a glass case for its protection and to prevent injuring from handling, and that it was not thereafter taken out of the case or frame to witness' knowledge except that witness had it photographed; that there was no change in it at the time of trial except that it had been worn considerably since he first saw it.

Said witness further testified that within a week or two after the death of the testator, which occurred in August, 1894, at the request of Washington Holt, witness went to the house of the testator and made search for a will; that he found papers scattered about somewhat, but found none of any consequence; that he searched through the bed-room and library and through his books to see if the will might not have been placed in some book, but that he found
96½ no testamentary papers of any kind; that Washington Holt stated he expected to find a will in which he was made executor, and that he would give witness $40,000 to find such a will, but that this may have been a careless remark made by Mr. Holt.

E. R. LEVY, another witness produced by the caveators, testified that he was an employee of the register of wills' office in August, 1894; that at that time and at the request of Washington Holt he searched through the house of the testator for a will; that Washington Holt offered him $5,000 to find it; that the papers had evidently been gone over before he examined them; that he saw in a grate that a considerable number of papers had been burned; that witness suggested sealing up the papers, because he saw how things were going on there, and he thought it best to do so until somebody in authority took charge.

97 Thereupon the caveators introduced the testimony of Ann C. Holt, John W. Holt, Mary Holt, Washington Holt, Mrs. Lockie Holt Iglehart, William G. Sterett, and Margaret T. Bowmer tending to prove as follows:

That Joseph Holt was born in or about the year 1807; that until the year 1856 (excepting a few years when he practiced law in Mississippi) he lived in the State of Kentucky; that he was first married in the year 1837 to Mary L. Harrison, who died in the year 1846; that in the year 1850 he married Margaret Wickliffe, who died about 1860; that there were no children by either marriage; that Joseph Holt died in the city of Washington, D. C., in August, 1894, leaving an estate of about $180,000.00; that the father of said Joseph Holt died before the war, and that his mother died in the year 1871; that at the time of her death and for many years prior thereto she was living at Holt's Bottom, in the family of Washington D. Holt; that said Joseph Holt had a brother named Robert S. Holt, who lived in Mississippi and married there in 1843 and died in 1867, leaving him surviving his widow, Ann C. Holt, who is still living; that the caveators Lockie W. Iglehart, Sarah Holt, Robert S. Holt, John W. Holt, James Holt, and Thomas Holt are the children of said Robert S. Holt and said Ann C. Holt; that said Sarah Holt was an invalid for many years in an infirmary at Philadelphia, when said Joseph Holt visited her, in the year 1868; that said Joseph Holt had another brother, named Thomas Holt, who died in the year 1876; that when said Joseph Holt died Washington D. Holt, one of the caveators in this case, was the only surviving child of said Thomas Holt; that said Joseph Holt had a sister named Elizabeth, who married William Sterett; that said William Sterett died in the year 1872; that said Elizabeth Sterett died in
98 the year 1863; that said William Sterett and said Elizabeth Sterett had two children, William G. Sterett and Margaret T. Sterett (who married William H. Bowmer), two of the caveators in this case; that said Joseph Holt had another brother, James Holt, who died in Texas in 1867, and that the caveators in this case are the only next of kin of said Joseph Holt who survived him.

And thereupon the caveators further gave to the jury testimony tending to show that prior to the war of 1861 the relations of said Joseph Holt with his mother and with all his brothers and his sister and with such of their children as were then living were as intimate and affectionate as is usual with persons standing in the same relation in which he stood to them; that during the war all of these relatives sympathized with the South; that Joseph H. Holt (a son of Robert S. Holt and Ann C. Holt, who died in 1886) was in the Confederate army during the war; that John W. Holt and Washington D. Holt, two of the caveators, were also in the Confederate service for a short time; that while during the war communication between said Joseph Holt and his relatives was infrequent, yet he had not manifested any bitterness of feeling towards any of them; that after the war and prior to the 7th day of February, 1873, he called on said Ann C. Holt and her son Joseph (who had been in

the Confederate army) when they were in Washington for a day or two and treated them kindly; that during this period between the close of the war and February 7th, 1873, said Washington D. Holt lived in the old homestead at Holt's Bottom, and that said Joseph Holt's mother lived with him; that in 1870 said Washington D. Holt married and continued to live with his wife Vanda at Holt's Bottom, where in the year 1871 there was born to
99 them a daughter, Mary; that during said period said Margaret Bowmer lived at the town of Cloverport, Ky., about six or seven miles from Holt's Bottom; that at that time the said Margaret T. Bowmer had one child, named Nellie Holt Bowmer; that on several occasions during the war and afterwards, prior to the 7th day of February, 1873, said Joseph Holt went to Kentucky and remained for several days at a time at said Holt's Bottom, visiting his mother, his brother Thomas, and his nephew, Washington D. Holt; that on these occasions or some of them Mrs. Bowmer went to Holt's Bottom to meet said Joseph Holt, and that during this entire period the relation of said Joseph Holt with all the members of said household and with Mrs. Bowmer and her family were pleasant and affectionate.

The caveators, subject to the said exception of the caveatees as to testimony of this character, gave evidence tending to prove that Thomas H. Holt, nephew of said Joseph Holt, who lived in Boston, visited him at his house on several occasions during the latter part of his life and was kindly received, and that said Joseph Holt spoke kindly of him to others after he was gone.

And, as a part of their testimony tending to show that prior to February 7, 1873, the relations between Joseph Holt and his relatives were pleasant and affectionate, the caveators gave in evidence to the jury letters written by said Joseph Holt and conceded by counsel for caveatees to be in his handwriting, as follows:

100 (To Robert S. Holt.)

WASHINGTON *Feby.* 13*th* 1867.

DEAR BROTHER—

I am in rect of your letter of the 30th ult & have no words in which to express my sorrow for the calamity which has befallen your daughter & the household that loves her so well. I do not think however there is ground for the discouragement which you seem to feel. She is young and the cause of her suffering not being a mental one will no doubt yield to treatment. Cures are under such circumstances effected. I think in the great majority of cases, & your purpose to give her the advantage of the best medical skill in the country, will I rejoice to believe, result in restoring her to permanent health.

* * * * * * *

I should be very glad to hear from you more frequently, & trust that ere long I shall have the happiness of learning of your daughter's improvement & complete restoration.

With love to sister & the family,

I am your affectionate brother,

J. HOLT.

101 WASHINGTON 15TH, 1868.

MY DEAR MOTHER.

Your letter of the 4th inst. was received a few days since & I was much gratified to learn that the remittance had reached you safely. Fearing that my letter had miscarried, I addressed you a brief note of inquiry on the subject which will no doubt soon come to hand, if it has not already done so.

My reason for asking so particularly about the landing was a fear that at the low stage of water prevailing in the summer & early fall the bank might be so steep as to render it difficult to haul up to the top a heavy block of stone or marble. Hence I thought it might possibly be advisable to land the monument at the mouth of . This, however, would be very inconvenient, and if it can be got up the bank at Stephens landing of course that is the best place for it.

I am unable to say whether Sally is still at the Asylum or has returned home. I have not heard from her or from her mother for a long time. After my visit to her, I endeavored to draw her into a correspondence with me, but did not succeed. I think it probable however if she had gone home her mother would have apprised me of it.

We are overwhelmed with the heat here. I have never known the weather more oppressive & exhausting. I hope my dear mother, that you are in a cool place to day & have nothing to make you sorrowful.

With love to yourself, & to the family, I am, as ever, your affectionate son,

J. HOLT.

102 (To Sarah Holt.)

WASHINGTON, *May 5th*, 1868.

MY DEAR NIECE.

Since my return home I have written to your mother mentioning my visit to you & my great gratification at the improvement which has taken place in your health. I hope to hear from her soon. Should you continue to grow better I trust it will not be necessary for you to remain much longer where you are. When you return you will only enjoy the society & sympathies of the loved ones at home the more from your having been so long separated from them. I am sure that the future has much happiness in store for you—you must believe this and keep your spirits cheered & hopeful.

I was so sorry that my visit to you was so long delayed & that I was obliged to return so soon. I wished to chat with you about so many things, & to drive with you into the surpassingly beautiful country which surrounds Philadelphia. I am certain that the sight of it would have made you glad. I shall avail myself of the first opportunity to see you again and then hope we will be able to enjoy a drive together.

You told me you did not read the newspapers. If agreeable to you I will send them to you occasionally & think if you read them, hey will afford you both amusement and instruction.

I must beg that you will write me soon—not a few lines, but a long letter, telling me all about yourself, & giving me the latest news you have from home.

I have a cousin in Philadelphia—Miss Mary Cash, who promised me to call and see you. If she does, I must ask that you will not refuse to make her acquaintance. She is very pleasant and kind-hearted, and if you knew her well I am sure you would like her.

Your affectionate uncle,

J. HOLT.

103 WASHINGTON *May* 2*d*, 1870.

MY DEAR MOTHER—

Having written you at some length recently, I only add a few lines at present for the purpose of enclosing the within fifty dollars, which I wish divided among the servants as follows: To Winny, $10—To Dick $10. To Joshua $10. To Sandy $5. The remaining $15 I desire to have divided among Joanna's children.

I shall be glad to hear that this remittance has reached you safely, & that you are in better health & spirits than when you last wrote me. I think of you, ever, my dear mother, & rejoice in the hope of seeing you again:

* * * * * * *

With love to the family & a heart full of love for yourself, I am as ever, my dear mother, you- affectionate son,

J. HOLT.

104 (To Mrs. Rosina Holt.)

WASHINGTON *Nov.* 15, 1870.

MY DEAR SISTER.

I send you by the express of to-day the photograph promised. I think it the best likeness that has been taken of me.

* * * * * * *

I cannot sufficiently express to you my grateful sense of the warm-hearted kindness & generous hospitality with which I was welcomed. I promised myself the pleasure of seeing you all again next summer, when I trust to have more time at my disposal than I had on the occasion of my late visit.

* * * * * * *

With love to mother & all the family, I remain,
Your affectionate brother,

J. HOLT.

105 (To Vanda Holt.)

WASHINGTON, *Nov.* 10*th*, 1871.

MY DEAR NIECE.

Your note of the 2d inst. did not reach me until this morning.

* * * * * * *

During my late visit there seemed to be continually resting on her spirit the shadow of a presentiment that we would not meet

again, when I conducted her from the table to her couch the morning I left, as she took her arm out of mine, she said quietly but sadly: "The last time." Her words were prophetic, though I could not realize them to be so at the moment.

* * * * * * *

With love to the family, I remain, your affectionate uncle.

J. HOLT.

106 WASHINGTON, *Dec.* 14*th*, 1871.

DEAR BROTHER—

I enclose you a post office order for $50 which I presume you will have no difficulty in having cashed at Cloverport. I will thank you to distribute the proceeds as follows, viz. To Joshua $10, To Winny $10. To Dick $10. To Sandy $5. The remaining $15 I wish divided among Joanna's children—you can give Dick's portion to him, either in money or in provisions, as you may deem best for his interests. Tell them that I send this to them as a Christmas gift.

Please advise the safe arrival of the enclosed.

With love to sister & the family, I remain your affectionate brother

J. HOLT.

Mr. Thomas Holt.

107 (To Mrs. Bowmer.)

WASHINGTON, *June* 24*th*, 1872.

MY DEAR NIECE.

Your kind letter of the 8th inst. was duly received, as was your subsequent telegram, saying that brother Thomas was worse & might not recover. Since then I have been anxiously awaiting further intelligence, but as yet nothing has reached me. The tone both of your letter & despatch was such as to induce fears for the worst, but as nothing has come conforming your apprehensions, I am striving to hope that the crisis has been passed in safety.

You have my heartfelt sympathy in the bereavement you have suffered from your father's death, of which I was first informed through a letter from Judge Krutcheloe. He has left you the memory of his long, active, useful & honorable life, & this you will always be able to recall with satisfaction & pride. The friendly relations between us had continued from my boyhood, without a moment's interruption, & he always had a warm place in my heart. The passing away of so many members of our family, seems to bring my own feet very near to the grave.

I have been promising myself the happiness of seeing you & yours the coming fall, but am beginning to fear that I shall be disappointed. Some engagements here, which I cannot well control, threaten now to prevent me from carrying out my original plan, which was to visit the west in September or October. I wish to see you so much, & shall certainly embrace the first opportunity to do so.

I thank you for what you say of those bright children of yours, of whom I have a most pleasant & fond remembrance. I trust you will not allow them to forget me.

With kind regards to Mr. Bowmer & love to yourself & the dear little ones, I am

Your affectionate uncle,

J. HOLT.

108 WASHINGTON, *Sept. 24th*, 1872.

DEAR BROTHER,

I am in receipt of your last letter & am glad to learn that you have been able to select a monument which pleases you & that it is so near completion. My contribution to it is enclosed in a draft on New York for $200 which I presume can be readily cashed. If it will be at all inconvenient for you to pay the remaining $50, let me know it & it shall be at once remitted. I do not make the remittance now because of a belief that it will be more agreeable to you to share in the expense of the work.

I shall not be able to leave home this fall, but hope to be in the West next summer. The time however is too far distant to be able to speak decidedly on the subject.

Please advise me of the safe arrival of this.

I have a great desire to see you all once more, & the old homestead With love to sister, I remain your affectionate brother,

J. HOLT.

Mr. Thomas Holt.

109 Thereupon LOCKIE HOLT IGLEHART, one of the caveators, called as a witness in their behalf, testified that she is a daughter of Robert S. Holt, of Mississippi, Joseph Holt's brother; that she is forty-five years of age, and is the wife of John E. Iglehart; that she has been living at Evansville, Indiana, about twenty-six years; that her mother, Ann C. Holt, lives with her there; that she, witness, has four children, Eugene, Annie, Lockie H., and Joseph H., who were born between 1875 and 1881, and that she, witness, first met her uncle, Joseph Holt, when she with her husband was on her wedding trip in 1874 in Washington. Thereupon counsel for the caveators asked the witness to state how her uncle, Joseph Holt, treated her and her husband on that occasion. To this question counsel for the caveatees objected on the ground that testimony as to the relations between the testator and his relatives subsequent to the date of the will in controversy was inadmissible and incompetent upon the first issue for the reason that it threw no light on the question whether or not the testator executed the will in controversy, and that it was incompetent upon the fourth issue upon the ground that revocation could not be shown or inferred from testimony of kindly relationship between the testator and members of his family arising subsequent to the date of the will; but the court overruled the objection and admitted the testimony; to which

ruling and admission the caveatees then and there duly ex-
110 cepted, and said exception was noted at the time upon the minutes of the court; and it was thereupon agreed and stipulated between the counsel, with the concurrence of the court, that said objection applied to all testimony of a similar character thereafter offered and admitted, without encumbering the record with a repetition of said objections and the exception based thereon.

Thereupon the witness in response to the question testified that on the morning after she arrived in Washington with her husband on their wedding trip in 1874 her uncle, Joseph Holt, called with his carriage and took them to his home, where they remained about five days; that he gave up his business and devoted his time to entertaining them very nicely, and went to his office only once during that time; that he was just as affectionate as any uncle could be; that he would sometimes, when witness would leave the room, say he disliked her to get out of his sight; that she reminded him of her father; that during that five days he gave her a handsome set of jewelry as a wedding present; that nothing of an unpleasant nature occurred at that time between witness and her uncle, but that he was just as kind as it was possible for him to be.

Mrs. Iglehart further testified (subject to the objection and exception of the caveatees in accordance with the above stipulation) that from 1874 until her uncle, Joseph Holt, died the relations between her and her family on the one hand and said Joseph Holt on the other continued to be of the most affectionate nature; that he visited her at her home in Evansville for a day or two in 1875 or 1876 on his way to Hot Springs, Arkansas, and that she met him on sev-
eral subsequent occasions in Washington, when for a few
111 days at a time he entertained her at his home: that from 1873 she kept up a correspondence with said Joseph Holt until a few years before his death, when, on account of failure of his eyesight, he had to conduct his correspondence through his servants, and that she felt a delicacy about having her letters seen by others and did not write so often, and that she had preserved a number of the letters which she had received from Judge Holt during said period. Whereupon said caveators offered said letters in evidence, and (subject to the objection and exception of the caveatees in pursuance of the above stipulation) they were read in evidence to the jury as follows:

112 (To Mrs. Iglehart.)*

WASHINGTON, *June 13th*, 1873.

MY DEAR NIECE.

I thank you sincerely for your kind letter of the 9th inst. & for the photographs which you were so good as to enclose. Yours especially seems charmingly taken & I shall prize and cherish them both fondly. It would afford me much gratification to see you all, but circumstanced as I am, when I go West, I am so hurried & my time so limited, that for the present, the prospect of my being able

[*.Words enclosed in parentheses erased by pencil in copy.]

to make you a visit is not very encouraging. I have not myself heard from brother Thomas' family for a good while my last news was to the effect that his health was not at all good, & that he & sister Rosina were living alone on the family, his son having gone to Cloverport & engaged in some kind of business there.

* * * * * * *

With affectionate regards to your mother, the family & yourself,

I remain your uncle,

J. HOLT.

113 (To Mrs. Iglehart.) *

WASHINGTON, *July 3d*, 1874.

MY DEAR NIECE.

I thank you for your very welcome letter of the 27th ult. & for the agreeable & interesting news of your family which it brought me, especially was delighted to hear what you say of the affectionate devotion of your brothers and of their successful industry & enterprise. I am sure they well deserve all the commendation you have bestowed upon them, & in the future I doubt not they will give the same generous & loving support to their mother & family, as in the past. They have their father's spirit, which was faithful & fervent in the performance of every duty. Greatly do I rejoice in their success & in the bright future, which I love to believe awaits them.

* * * * * * *

With loving regard to your mother & family, I remain,

Your affectionate Uncle,

J. HOLT.

114 (To Mrs. Iglehart.) *

WASHINGTON *Oct. 7th* 1874.

MY DEAR NIECE.

I am in receipt of your letter of the 3d inst. & hasten to congratulate you on the prospect of happiness which is opening before you. May all your dreams—bright as I am sure they are—be fully realised.

My present expectation is to be in Washington about the time you mention, & I shall be much gratified to see you both. Please let me know of your arrival without delay. My address is 236 New Jersey Avenue, Capitol Hill.

I thank you sincerely for the news communicated in regard to the different members of your family.

With affectionate regard to your mother, I remain your sincerely attached Uncle,

J. HOLT.

[* Words enclosed in parentheses erased by pencil in copy.]

115 (To Mrs. Iglehart.)*

WASHINGTON *Jany 5th*, 1875.

MY DEAR NIECE.

* * * * * * *

I have been very lonely since you left & have wished so often that the light which you left in my home could be renewed as I trust it will be one of the days that are before us.

I passed Christmas alone in my room, & but for the merriment of the servants the house would have been both still & joyless.

I am rejoiced that you & Mr. Iglehart went to the Bottom to pass your Christmas. I thought of you all that day & was so said that I could not make one of the circle. For me there could be no more delightful place to spend a Christmas than under sister Rosina & brother Tho's hospitable roof. I hope when writing again that you will tell me how you enjoyed yourself at the old homestead.

Earnestly wishing that the new year, on which we have just entered, may, in all its seasons & changes come to — & Mr. Iglehart & to the loved ones around you laden with blessings, I remain your

Affectionate Uncle

J. HOLT.

116 (To Mrs. Iglehart.)*

WASHINGTON *Sept. 28th*, 1875.

MY DEAR NIECE.

I received on yesterday a note of greeting from the young stranger, whose advent has no doubt filled your heart & house with gladness, & am much obliged for this recognition of my interest in yourself & home. I sincerely congratulate you on this accession to your household, & trust that he will prove a jewel whose lustre & worth will grow with the year.

I received your last letter & thank you for it.

With kind regards to Mr. Iglehart, I remain

Your affectionate Uncle

J. HOLT.

P. S. I am much indebted to you for the photographs which you were so good as to enclose me. That of your father is an excellent likeness, but the eyes seem to me sadly spoiled.

J. H.

117 (To Mrs. Iglehart.)*

WASHINGTON *Decr. 29th* 1876.

MY DEAR NIECE.

Since writing you a few days since I have recd. your welcome letter of the 12*st* inst. inclosing the photographs of your brother-, for which you have my sincere thanks. It so happens, however, that I am not sufficiently familiar with their features to enable me to

[* Words enclosed in parentheses erased by pencil in copy.]

distinguish the one from the other, which I desire to do. The ph-tographs are therefore returned with request that you will be so good as to write the name & age on each of them & then re-enclose them to me. They are certainly a group of fine looking young men, & I am glad to believe that their character & lives are even more comely than their faces, handsome as they are.

* * * * * * *

I concur in your regret that I am so far from my relations & have so little opportunity of knowing them well. At my advanced age I greatly need the sympathies which can not be found among the strangers in the midst of whom I live, but there seems to be no prospect that my long years of isolation will terminate short of the grave.

Remember me kindly to your Ma & to Mr. Iglehart, & believe me as ever

Yours affectionate Uncle

J. HOLT.

118 (To Mrs. Iglehart.)*

WASHINGTON, *March* 21*st*, 1881.

MY DEAR NIECE.

You have doubtless long since come to the conclusion not only that I am a laggard correspondent, but that I have been strangely wanting in my duty to yourself. The explanation of my protracted silence is simply this. About the 1st of last October, somewhat hurriedly & unexpectedly, I sailed for Europe, taking sister Rosa with me. The trip was not undertaken for sightseeing or pleasure hunting, but solely in the hope of accomplishing some relief for her broken down health & spirits. * * *

* * * * * * *

Not knowing the address of your brother Thomas, I must ask that you will give the proper direction to the enclosed letter, & have it forwarded to him.

I shall rejoice if the spirit moves you to write me again soon. You can not send your letter- to any quarter where they will command a higher premium than just here.

With best regards to Mr. Iglehart, I remain your

Affectionate Uncle,

J. HOLT.

119 (To Mrs. Iglehart.)*

WASHINGTON *June* 28*th*, 1882.

MY DEAR NIECE.

Your last letter of the 31st of May, was forwarded to me from Ky. & was received in due course of mail. I thank you for it; for its kindly spirit & for the detailed information given in reference to the different members of your family, of whom I never hear ex-

[* Words enclosed in parentheses erased by pencil in copy.]

cept through yourself. I always felt that the removal of your mother to Miss. was a mistaken step & should rejoice over her return to Evansville, alike on her account & Lena's as your own. It is a great gratification to learn that your brothers are all doing so well.

* * * * * * *

I wish I could see your children. The oldest must be large enough for you to begin with him the lessons, which may so impress his future life. We are all so selfish and so unsparing of others by nature, that lessons to coun-eract this evil tendency cannot be commenced too soon or be too diligently impressed. I trust that you will, in all possible ways, teach your children unselfishness, & a considerate & habitual gentleness & kindness for all. Teach them to respect life in whatever form found, as the gift of God & not to be wantonly destroyed; teach them to love flowers, as the smiles of God, to love birds & to feed them, & to look upon their nests as something sacred, to be sympathized with & tenderly watched over. As the cut upon the sapling endures & appears in the future tree enlarged & deepened in its growth, so will such lessons appear in future years, upon the heads & hearts & lives of your dear little children, if you can succeed in impressing them while they are yet young.

* * * * * * *

Pardon the length of this letter & with best regards to Mr. Iglehart, believe me as ever your affectionate uncle,

J. HOLT.

120 (To Mrs. Iglehart.)*

WASHINGTON *Octr. 9th* 1882.

MY DEAR NIECE.

* * * * * * *

I am glad that you think of coming to Washington. You will find my home a very lowly & gloomy one, but my house & heart will be always open to welcome you. Should you come, you must let me know a little in advance, in order that I may be certainly here to meet you. * * *

With kindest regards to your mother & Mr. Iglehart, I am your affectionate Uncle,

J. HOLT.

121 Mrs. Iglehart further testified that in a letter to said Joseph Holt, sent in pursuance of a request from him in a letter to her which she had been unable to find, she sent to him a list of her brothers and sisters and of her own children. Said list was found among the papers of said Joseph Holt and was introduced in evidence by the caveators and is as follows:

[* Words enclosed in parentheses erased by pencil in copy.]

R. S. Holt, died 27″ May, 1867.
Sarah Ellen Holt, born 5″ Oct., 1844.
Joseph H. Holt, " 16″ July, 1846.
John W. Holt, " 21″ July, 1848.
Lockie W. Holt, " 21″ Dec., 1850.
Annie E. Holt, " 15″ May, 1853.
Rob't S. Holt, " 9″ Dec., 1855.
Thomas H. Holt, " 19″ July, 1858.
Lena M. Holt, " 15″ Dec., 1860.
James J. Holt, " 21″ July, 1863.
Joseph H. Holt, died 28″ Aug., 1886.
Annie E. Holt, died 12″ Oct., 1868.
Lena M. Holt, died 25″ Aug., 1882.
Eugene Iglehart, born 21″ Sept., 1875.
Annie Iglehart, " 21″ July, 1877.
Lockie H. Iglehart, " 24″ Sept., 1879.
Joseph H. Iglehart, " 29″ Nov., 1881.

122 & 123 Thereupon the deposition of ROBERT S. HOLT, one of the caveators, son of Robert Holt, a brother of said Joseph Holt, was read on their behalf, tending to prove that said witness met said Joseph Holt on one occasion only, on the occasion of his visit to the witness' mother at Evansville, Ind., in 1875 or 1876; that said Joseph Holt had become very much embittered toward the South and Southern people, growing out of the war, which bitterness existed between him and some members of his family, but not extending to witness' father or the latter's immediate family; that prior to 1883 there was no communication of any kind between Joseph Holt and witness, the latter feeling that if Joseph Holt had permitted the bitterness engendered by the war to render him indifferent toward
124 witness the first advances toward reconciliation must come from him; that in 1879 said Holt wrote a letter to witness' brother, who was then practicing law in Yazoo City, upon the occasion of the latter having saved the life of a Northern man who was attacked by a mob; which letter was much appreciated by witness and was in the words and figures following:

WASHINGTON *August 2d* 1879.

MY DEAR NEPHEW.

I write to thank you—which I do from my heart—& to congratulate you on your heroic resistance to the disgraceful mob, which recently assembled in your city. Your conduct as reported in the public journals was strictly in the line of your duty, & was most honorable to yourself, & was worthy alike of your name, the office you hold, & the majesty of the law you represented. If others have been terrified by a brutal & cowardly crowd, seeking to trample upon the rights of an unoffending citizen, you must have joy in the consciousness that you at least have braved & defied its threatenings. Through the long years to come I am sure that this noble devotion to duty—so conspicuous

amid the demoralization of the times—will be for you a proud and happy memory.

Your affectionate uncle

J. HOLT

Jos. H. Holt Esq.
Yazoo City, Miss.

The foregoing letter and all other letters subsequent to February 7, 1873, and all testimony as to the relations between Joseph Holt and his relatives subsequent to that date were and each
125 and every of the said letters and items of testimony was objected to on behalf of the caveatees on the ground that testimony as to relations between said Holt and his relatives subsequent to the date of the will in controversy was inadmissible and incompetent upon the first issue for the reason that it threw no light upon the question whether or not said Joseph Holt executed the will in controversy, and that it was incompetent upon the fourth issue upon the ground that the revocation could not be shown or inferred from testimony of kindly relationship between said Holt and members of his family arising subsequent to the date of the will; but the court overruled the said objections — admitted the said testimony; to which rulings and admissions the caveatees then and there duly excepted; which said exception was noted at the time upon the minutes of the court; and it was thereupon agreed and stipulated between the counsel, with the concurrence of the court, that said objection applied to all testimony and each and every item thereof so offered and admitted without encumbering the record with a repetition of the said objections and the exceptions based thereon.

The deposition of said witness further tended to show that prior to 1883 he had not felt unkindly toward Joseph Holt, but somewhat resentful that the latter had permitted the bitterness growing out of the war to so affect his relations to his family that he had apparently manifested no interest in the family of his brother, consisting of nine children, the eldest of whom was a student at college at the time of their father's death; that the manifestation of interest in the way of aid or assistance was unnecessary, Robert
125½ Holt's estate being sufficient to take care of his family, but the reference was to such interest, sympathy, and friendship as might be manifested in other ways; that from the year 1883 down to said Joseph Holt's death a correspondence was kept up between them, and thirteen letters between said dates were introduced in evidence, subject to the foregoing exception and stipulation. The following are extracts from said letters:

126 (Rec., —.)

WASHINGTON, *May 11th*, 1884.

MY DEAR NEPHEW:

Since my return from a visit to my old home in the West, I have received your last letter without date, & was very glad indeed to hear from you again. * * *

I am truly sorry to hear what you say of your mother's impaired health & trust that her condition is not so serious as you fear it to be. I am glad that she is out of Miss, but in a climate & breathing an atmosphere which cannot but powerfully aid in her restoration. If John can possibly leave Miss. in August & September, the most dangerous month- I believe, he should certainly do so. I hope you will take the utmost care of your own health avoiding all exposure, overwork & every predisposing cause to disease. By doing this your life may be lengthened out until you can find elsewhere an asylum from the dangers that now surround you.

Affectionately your Uncle,

J. HOLT.

R. S. Holt, Esq.

(To Robert S. Holt; Rec., 584.)*

WASHINGTON, *August 5th*, 1884.

MY DEAR NEPHEW.

* * * * * * * *

The evidences of your professional prosperity furnished by the papers so kindly sent me, gave me great pleasure, & it is with a positive delight that I think of your future as animated by the inspirations of the name you bear, & as honoring that name by your successes.

Your affectionate Uncle

J. HOLT.

127 WASHINGTON *March 20th* 1887.

MY DEAR NEPHEW.

I recd. — read with much pleasure your welcome letter of the 6th inst. you have my hearty thanks for it & for news you have given me of yourself & family, in whose fortunes I feel the deepest interest. * * * I am very sorry our family is so scattered & in consequence see so little of each other. When I heard that you were on a visit to your mother, I regretted much that you were unable to extend it as far as my old home, where you are affectionately remembered & will be always warmly welcomed. I am glad that the place has not passed out of your recollection & that you still contemplate seeing it again when time & circumstances will allow. You know it is your father's birthplace & the home of his childhood & youth and in addition to the inspirations which it must thus have for you, it may not, in its improved condition, be wholly without attractions in itself.

* * * * * * *

Your affectionate Uncle

J. HOLT.

[* Words enclosed in parentheses erased by pencil in copy.]

WASHINGTON *August 4th* 1888.

MY DEAR NEPHEW.

Your letter of the 26th ult. recd. on yesterday, was a surprise, but a most agreeable one, I assure you. I had not before heard that you were even looking in the direction of the Pacific & I now hail your presence there as a marked event in your history & one
128 that may exert a beneficent influence on your future. * * *

Your affectionate uncle,

J. HOLT.

P. S. * * * But under whatever *al*lusions I may be laboring in regard to the Pacific Slope I cannot be mistaken in reference to your professional life in Miss. Most earnestly & constantly have I desired that you might find a higher and broader field of action & a role more worthy of your genius and attainments. Had your father occupied such a field he would have left a good record of himself. He was very eminent in his profession & this I say, not from personal observation—for I never knew him at the Bar—but from the testimony of distinguished lawyers who knew him well & had often witnessed and felt his power in the conduct of his cases.

WASHINGTON, *Sept. 25th*, 1888.

MY DEAR NEPHEW.

I am in receipt of your welcome letter of the 19th inst—also of the photograph of your brother & yourself which you were so good as to send, & for which I sincerely thank you. So far as my imperfect acquaintance with you both enable me to judge I consider them good likenesses. I will give them a place of honor in my house where they will constantly recall my next heirs, in whose prosperity & happiness I feel a deep & enduring interest. * * *

I thank you for what you saw of brother James "record" as reported to you. It accords with intelligence heretofore recd. & which is exceedingly gratifying. His limited education great- increased the obstacles in his way, but he was honest, had an indomitable will, & an ambition to succeed, which he did.

your affectionate uncle,

J. HOLT.

129 WASHINGTON, *Sept. 26th*, 1889.

MY DEAR NEPHEW:

I have not been "surprised" but greatly gratified to receive your last two letters of the 6th and 12th inst. Accept my thanks for the pleasure they have given me. Your descriptions of the wonderful country in which you have cast your lot are very graphic & strongly impress me with a conviction that you have acted wisely & well in turning your back on Mississippi. The favorable views, expressed in former letters, seem to be fully confirmed by further observation, so that in your environment & in the future as it is opening up before you, there appears to be much, very much to animate and encourage you. In this I do heartily rejoice. I wish you could ap-

pear in some trial of public interest, which would enable you to show to the court the Bar and country, what you are. It would be of immense advantage to you. I hope you will seek and find an early opportunity of making this profert of yourself. In this aggressive age, none succeed but those who press to the front. Those who lag are left & lost.

* * * * * * *

I have nothing to say of myself, but that my infirmities grow apace & unhappily can never do otherwise. I have been in the City during the entire summer, but in 8 or 10 days expect to go West on a visit to my old Home where I may remain until about 1st of November. I shall be at all times happy to hear from you, & if I wrote in reply but rarely & briefly, you must know that it is my failing pen & not my heart that is at fault.

Your affectionate uncle

J. HOLT.

130 Said Robert Holt further testified that prior to February, 1873, witness did not know how Joseph Holt felt towards him and devoted little thought to the subject, only feeling that if indifference to the children of his brother could spring from the bitterness and hostility engendered by the war, witness had no concessions or compromises to make on the subject, and that the revival of more interest on the part of said Joseph Holt was first due to the correspondence and friendship which sprung up between said Joseph Holt and witness' sister, Mrs. Lockie H. Iglehart.

The caveator MARGARET T. BOWMER further gave testimony, subject to the said exception, tending to prove that in the fall of 1876, she and her husband having stopped at a hotel in Washington, Joseph Holt took them to his house and entertained them two days and nights, treating them affectionately, and telling Mrs. Bowmer that it was like having his own dear sister back again; that said Joseph Holt never visited her father's house after the first year of the war; that he did not revisit Kentucky until 1869 or 1870, when he stopped at the old homestead, with the family of Thomas Holt; that at that visit there were cold and strained relations between him and said family; that he did not visit there again until the Centennial year and after the death of Thomas Holt;
130½ that his relations to witness were always pleasant until 1879, when trouble arose between them from Mrs. Washington Holt and her mother telling him she criticised him, which statement was wholly untrue; that witness wrote a letter in the effort to affect a reconciliation, which was not answered, and that said Joseph Holt never communicated with her at all afterwards, but that her daughter, Nellie Burks Holt, had letters from him down to 1888.

Letters from said Joseph Holt to Mrs. Bowmer or her daughter Nellie after Feb. 7, 1873, were introduced in evidence by the caveators (subject to the foregoing exception and stipulation). The following are extracts from said letters:

131 WASHINGTON, *Decr.* 22*d*, 1875.

MY DEAR NIECE

Your letter of the 7th inst has been received, & I have read it with the greatest pleasure. I thank you so much for sending me all the news of the family, which but for you I would never hear. You have greatly improved in your writing & composition since the date of your last letter, & I am sure that none of the little girls at your school are learning faster than you are. I am very glad indeed to believe this. I am delighted that your mother has given you all of your Grandma's name. I shall love you the more for that.

Some days ago, I sent you by the mail, a volume of Anderson's Fairy Tales, which I hope you will find time to read. They are beautiful stories & cannot fail to interest you. You should read them carefully, so that you will be able to remember them & talk about them to your playmates & friends. It will give them great happiness to hear you.

I shall not be able to leave home this winter, but expect to see you all next summer. Thank your Ma for me for her letter, which was very welcome. The sight of her handwriting always gladdens my eyes. Give her my love & accept of it for yourself, from your affectionate

uncle J. HOLT.

Miss Nellie Holt Bowmer.

132 (To Mrs. Margaret T. Bowmer.)

WASHINGTON, *Feby* 28*th*, 1876.

MY DEAR NIECE

I was much gratified, a few days since, to receive your letter of the 17th inst. together with Nellie's. What you say about the improvement in your health gives me great pleasure—the more so, because of the solicitude and anxiety I have felt on the subject for several years. * * *

What you say of the ill health of Sister Rosina & brother Thomas gives me much sorrow. I am most anxious to see them both again, & promise myself that happiness during the coming summer.

Be assured that Nellie's letters can never "worry" me. On the contrary they always give me a joy which, I am certain, will increase with her years.

With much love to yourself and the children, I remain,

Your uncle,

J. HOLT.

133 (To Mrs. Margaret T. Bowmer.)

WASHINGTON, *July* 25*th*, 1876.

MY DEAR NIECE.

I am much obliged for your pleasant and kind letter of the 12th inst, & for the interesting family news it brings me.

Those weddings, of which you speak,—though they do not at all

concern me,—may be accepted as proofs of some lingering vitality in the quiet old "Bottom" which cannot be otherwise than gratifying. What you say of your visits there, expresses my own feelings. I am sure I shall find there a sad & dreary blank, which nothing can fill. Still I earnestly desire to see the old Homestead again, whatever gloom may overhang it, and hope to be able to do so, in September or October. * * * I anticipate great pleasure in meeting you and yours once more, & shall be very sadly disappointed. * * *

I read with much pain what you write as to brother Thomas' condition. I have been indulging the hope that his health was improving. * * *

With love to the children, I remain your affectionate uncle,

J. HOLT.

(To Mrs. Nellie Holt Bowmer.)

WASHINGTON, *Jany.* 3*d* 1879.

MY DEAR NELLIE:

* * * I thank you very much for your letter, & for all the pleasant news it gives in regard to yourself, your school, family & friends. I am sure none of my nieces could have written a letter that would have given me more pleasure.

Your New Year gift also came safely to hand this morning. It was quite a surprise. It is very beautiful & I am quite proud of it, as I am grateful, to be so remembered by you. Be assured that I shall love every stitch of this cushion for your sake, & shall never look upon it without thinking lovingly of the dear little fingers which have so toiled to give me this happiness. You may be sure that my heart will not forget such fingers as these.

* * * * * * *

With love to all, I remain your affectionate uncle—

J. HOLT.

(To Mrs. Nellie H. Burks.)

WASHINGTON, *July 8th* 1888.

MY DEAR NELLIE.

I have received and read with much satisfaction your letter of the 3d inst, which was a surprise as I had not supposed that the matter about which you write had made any impression on your memory, if, indeed, it had at all, attracted your attention.

I understood at the time that the visit made by Vanda & myself, was to the Ladies of the House, generally, without any designation of names—which, of course, included yourself—& I believed that it was so made known to the servant, though I cannot recall Vanda's exact words. I expected to see you, & this expectation continued up to the moment we left. I did not feel privileged to ask why you did not recognize our visit. It is clear enough now, from what you say, that there was a misunderstanding on your part, and it is gratifying to realize that it was this misunderstanding & not an

unwillingness to meet me, that lost me the pleasure of seeing
135 you—I trust that I shall be more fortunate when I visit the West again.

Allow me, though at so late a day, to congratulate you which I do heartily—on the new life upon which you have entered. I hope that it will fulfill all your dreams, & that its joys will grow with the many years that I love to believe are in store for you.

Affectionately

Your Uncle,

J. HOLT.

(To Mrs. Nellie H. Burks.)

WASHINGTON, *August 6th*, '88.

MY DEAR NIECE.

I thank you for your kind letter of the 19th ult & for the enclosure which you were so good as to send & which is now returned. It is a privilege, doubtless, but rather a sad one, to be allowed to confront one's green youth, face to face, as this letter enables me to do. I was then in my fifteenth year, just escaped from the woods to the college grounds, & with very primitive views of the world's life, whose threshold I was crossing. It is gratifying, however, to observe, that even at that early age, I had formed good resolutions for my future guidance, little dreaming of the obstacles with which "the world, the flesh & the devil" might block my pathway.

I read with much pleasure what you say of the railroad. Its whistle will help to wake up the somewhat chronic torpor of the Bottom & transform generally its quiet life. I hope this transformation will bless you in many ways. As to myself I am too old to "catch on to it" with anything like active sympathy. The little fragment of life remaining to me must be lived out, in memory,
136 among the barges, flatboats & steamers, the log cabins, forests & bridle paths of the long ago.

I sent you the photograph as requested, some days ago.

With hearty good wishes, I remain your affectionate uncle

J. HOLT.

Mrs. Nellie H. Burks.

137 The caveator WILLIAM GREENE STERETT testified that Joseph Holt visited his father's house in 1860, remained a day or two, and was upon kindly relations with his sister, witness' mother; that he never visited her after that date and was not present at her funeral, in 1863, but, he thinks, wrote her one letter between 1860 and her death; that witness was entertained by him as his guest at the Hot Springs about 1877; also in Washington in 1888; that witness moved to Washington in 1889, after which he saw him constantly, and kindly and affectionate relations existed between said Holt and witness and his family, making them frequent presents, taking witness' wife and children to drive with him, and speaking to others of the great pleasure which he derived from having witness' family so near him in his old age; said witness'

testimony being admitted subject to the said objection above mentioned.

Said witness further testified that in 1867 James Holt, a brother of Joseph Holt and an uncle of witness, with whom witness was then studying law, died unmarried and childless; that after witness moved to Washington, in the year 1889, said Joseph Holt talked with witness about the said James Holt; and thereupon, against the said objection of the caveatees that testimony as to conver-
138 sations between the witness and said Joseph Holt concerning James Holt had in the year 1889 or subsequent thereto was incompetent to be received or submitted to the jury upon the question of the genuineness of the will or upon any other issue in the cause, said James Holt having died six years before its execution, childless, and that the admission of said testimony was calculated to confuse and mislead the jury, —; but the court overruled the said objection and permitted the witness to further testify as follows:

A. He made inquiries about his brother James, and I told him about how he stood in the State and about his character as a lawyer. He said he was a remarkable man, a man without education—for Uncle James had no education—who by force of his genius, of his intelligence, forced himself to the front, and this, too, notwithstanding Uncle James had nearly always been an invalid—had been an invalid for years.

Q. What had been your uncle James' sympathies during the war?

A. His sympathies were with the South.

To the admission of which testimony the caveatees objected before the same was given, upon the grounds aforesaid; but the court overruled the said objections and admitted the same; to which ruling and admission the caveatees then and there duly excepted, and the said exception was noted at the time upon the minutes of the court.

On cross-examination said witness testified that he was not aware whether Joseph Holt knew whether witness was living or dead in 1873, and that there was no intercourse between them of any
139 kind between 1864 and 1878; that in 1864 he had written Joseph Holt for advice to guide him in life, being then a college student, and that Joseph Holt had replied he knew no man better capable of advising witness than his father.

The evidence for the caveators (admitted subject to the objection and exception aforesaid) further tended to prove that in 1891, while Eliza Sterett (a relative by marriage of the caveator William G. Sterett) was in Washington, said Joseph Holt inquired of her kindly about Mrs. Bowmer and her family; spoke of her without any trace of bitterness or animosity, and said to said Eliza Sterett that he had none of his sister's writing that he could find, and that he would like to have Mrs. Bowmer furnish it, and further said to the witness in that connection, "Tell Maggie (meaning Mrs. Bowmer) to send it to me on your return home;" that on her return to

her home, in Kentucky, shortly afterward Mrs. Sterett communicated this message to Mrs. Bowmer, and that Mrs. Bowmer complied with her uncle's request.

That in 1877 said William G. Sterett, at the invitation of his uncle or of his aunt Rosina (Thomas Holt's widow), visited them for a few days at Hot Springs, Arkansas; that during that visit the relations between said Sterett and his uncle Joseph were very
140 kindly, and that again, in 1888, when Mr. Cleveland was inaugurated President, said Sterett and Col. Dick Wintersmith took breakfast with said Joseph Holt at the latter's invitation; that said Sterett was in Washington about three days on that occasion and saw said Joseph Holt on several occasions and their relations were then very friendly; that in 1889 said Sterett came to Washington and has resided here ever since with his family, consisting of his wife, his three children, Willie Greene Sterett, who was born about 1881; May Sterett, who was born about 1882, and Malcolm Sterett, who was born about 1872; that from 1889 until said Joseph Holt died the most affectionate relations existed between him and said Sterett and his family; that they all visited him frequently at his house, and that he always received them cordially; that he frequently went in his carriage to their house and took Mrs. Sterett or the children out driving; that he frequently gave Mrs. Sterett money in small sums and made presents to the children, and that during this time he spoke to others of the great pleasure which he derived from having said Sterett and his family so near him in his old age.

As to the relations that existed between the caveator Washington D. Holt and his family, on the one hand, and said Joseph Holt, on the other, after February 7th, 1873, the caveators gave evidence to the jury (subject to the objection and exception of the caveatees above noted) that from about that time until a few years before his death said Joseph Holt visited the old homestead, where they lived, every year and sometimes twice a year, remaining usually two or three weeks; that said Washington Holt and his wife, Vanda Holt, and his daughter, Mary Holt, after 1873 visited said Joseph Holt at his house, in Washington, on many occasions,
141 sometimes together and sometimes separately; that in the years 1878 and 1879 said Vanda Holt, being an invalid, remained at the house of said Joseph Holt, in Washington, for five or six months, being attended by physicians, who were paid for their services by said Joseph Holt; that these visits continued till shortly before the death of said Joseph Holt, said Washington Holt visiting him in the early part of August, 1893, the year prior to his death, and said Mary Holt being in Washington for several months in the year 1893, stopping at a boarding-house, on account of her uncle's illness, but visiting him every day and ministering to his wants; that during the period from February 7th, 1873, until the death of Joseph Holt a constant correspondence by mail was kept up between said Washington Holt and his wife, Vanda Holt, and his daughter Mary, on the one hand, and said Joseph Holt, on the other, the last letter of this correspondence being one written by Mary Holt to said

Joseph Holt, which was in the post-office at Washington when he died; that during these years said Joseph Holt made many gifts and presents to said Washington Holt, his wife and daughter; that in 1889 said Joseph Holt sent said Vanda Holt and her daughter Mary to Europe, paying their expenses, and that up to the time he died nothing had occurred at any time to interrupt the intimate and affectionate relations that existed between him and said Washington Holt and his family.

Subject to the above-mentioned exception of the caveatees to each and every part of the said testimony and to each and every of the said letters, the caveators introduced a large number of letters from said Joseph Holt to said Washington Holt or his family, conceded to be in the handwriting of Joseph Holt. The following are extracts from which letters:

142 (To Mrs. Rosina Holt.)

WASHINGTON *Oct. 14th*, 1876.

MY DEAR SISTER.

I reached home safely & would have had a pleasant journey but for the sad memories of the bereavement you & all of us have suffered, which followed me, you have my heartfelt sympathy in the great sorrow which has come upon you. Our grief, however, & bitter sense of loss should be mitigated by a conviction that the loved & the lost one was prepared for the change & has been blessed by it. The remembrance of his noble life & of the virtues which so distinguished it will be, I am sure, as an inspiration & a fragrance for us all which can never lose their freshness. Let the hope of rejoin*gin* him in the better world encourage & strengthen us to bear the burden & perform the duties which are yet upon us.

* * * * * * *

If I can be of any service do not hesitate to let me know it.

* * * * * * *

I shall at all times be most happy to hear from you & shall be always thankful for a letter however brief, from any member of the family.

With love to all, I remain, your affectionate brother,

J. HOLT.

143 WASHINGTON *Decr. 15th* 1876.

MY DEAR NIECE.

I have received and read with great satisfaction your kind letter of the 28th ult. While I desired so much that you should see the Exhibition, I still had fears that your strength might not prove equal to the undertaking. The greater therefore is my joy now to realise, as I do from your letter, that your strength bore up under all the fatigues, & that you were enabled to walk through & examine & enjoy that great treasure house of the arts, not only without exhaustion but without serious discomfort. It makes me very

happy indeed to know this, & to be assured how much pleasure the memories of this wonderful feast will afford you in all the years to come. * * *

I thank you for what you say of your visit to my lonely home. It was like a burst of music & sunshine into its silent chambers. Yet it was tantalizing and unsatisfying for me, because it was so brief. The cup of its enjoyment scarcely touched my lips before it was snatched away again. Could you have remained long enough to enable me to show you the city & its attractive surroundings, & to make you understand that you were not only in my home but in my heart also, my gratification would have been great indeed. I comfort myself with the hope that I shall yet be able to welcome you to my house under more favorable circumstances.

* * * * * * *

If you knew how much pleasure your letter gave me, I am sure you would write again. Will you not. You could not have a more obliged or grateful correspondent.

With love to my dear sister, Washington & yourself, I remain your

affectionate uncle,

J. HOLT.

Mrs. Vanda Holt.

144 (To Mrs. Vanda Holt.)

WASHINGTON *July 26th* 1881.

MY DEAREST NIECE.

I wrote you at some length on the 19th inst.

Owing to some improvement in Annie's condition, and to the assurances given me by the servants as to their conduct during my absence, I have determined to set out for the west on Friday morning. If the connections are made on the route, I ought to reach your landing by the Packet of Sunday. At this season, and in the probable state of the river, I suppose there will be little reason to fear an arrival by night, which I especially desire to avoid. The prospect of being so soon with you again under the roof of the old home, so engrosses and transports my life, that I can think of nothing else. Preferring, as the good St. John says, "Not to write with paper and ink the many things I have to say, but trusting soon to speak them to you face to face," I remain, with love to Washington and the children, as ever

Your loving uncle,

J. H.

145 (To Mrs. Vanda Holt.)

WASHINGTON, *Oct. 16th* 1881.

MY DEAREST NIECE.

* * * * * * *

In the light of your restored health, the world for me clothes itself in summer robes and I realize that in your happiness I shall find an abounding compensation for all ills possible to myself. But

be careful that your growing strength does not tempt you to overtask it. Let the beneficient process of nature, now going on in your behalf, be aided and encouraged in every possible way. Suffer no toil or neglect or undue exertion to occasion it a moment's embarrassment. The opinion of the physicians as to the character of that tumor has brought me great relief. * * *

* * * I accept it as a great compliment that when you wish to talk, you think of me. It shows how justly you have appreciated me as a fond and delighted listener. Your bright, gentle words have always been music for my ears and manna for my heart. You have inspired

ing more conspicuously than in this.

I am rejoiced that you have procured so fine a piano, knowing as I do, how large a contribution it will make to the intellectual pleasure of your life. Did you dispose of your old instrument? I have a piano here, "as good as new" which I wish Mary to have when I am gone.

* * * * * * *

With love to Washington and the children, I am, ever your loving uncle.

146 (To Mrs. Vanda Holt.)

WASHINGTON, *Feb'y 5th* 1882.

MY DEAREST NIECE.

* * * * * * *

Tell Mary & Rosa, that if they knew how thankful I am for their letters, & how much pleasure I have in reading them over & over again, I am sure they would write more frequently. It would be good exercise for them, & their dear little letters could not receive from anybody a warmer welcome than I would give them.

* * * * * * *

Pray do not, from a feeling of mistaken kindness towards myself, withhold any information concerning your health. Let *me* have the privilege of sharing your joys & your sorrows whatever they may be.

147 (To Miss Rosa Holt.)

WASHINGTON *Feby. 20th*, 1882.

MY DEAR NIECE.

You have my sincere thanks for your last letter, & also for the letter which you were so good as to send me in December. You have improved so much in your handwriting, which I am delighted to see. Your letter is in every way nice, & I am sorry only because it is so short, but I am sure you will make the next one longer. You might have told me something about the windmill, how it looks & how you like it. I think of it often, & hope it will make the grass & flowers happy next summer by the water which it will pump for them out of the well.

With love to your Ma & Pa & to Mary, I remain your affectionate

Uncle,

J. HOLT.

P. S. I must not omit to tell you how pretty your Valentine is. I shall preserve it fondly & it will always have something sweet to say to me about my dear little niece.

148 (To Washington Holt.)

WASHINGTON *July 2d*, 1882.

MY DEAR NEPHEW:

* * * I read with absolute delight, what you say in regard to a continued improvement in Vanda's health & the disappearance of those symptoms which alarmed me so much while I was with you. While it is most gratifying to be assured that my endeavors for her happiness are so generously appreciated by you, yet it must be stated that these endeavors have constantly brought with them their own abounding reward, & I desire no other. The restoration of her health & the prolongation of her life are with me objects of ceaseless & supreme solicitude, & they can never be otherwise. You can hardly yourself realize more anxiously than do I, how much of the future is bound up with that life, which is so unspeakably precious to your family & home.

* * * With love to her & the dear little children, whose letters I have also received, I remain your

Affectionate Uncle,

J. HOLT.

149 (To Mrs. Vanda Holt.)

WASHINGTON *Feby. 1st* 1885.

MY DEAREST NIECE.

* * * * * * *

You have lost nothing from not hearing from me more frequently. Nothing has of late occurred in my own life or home worth mentioning, & as to the outside world, reprehensible as such a course may be, I have come practically to ignore it.

* * * * * * *

Table scarfs and all such cunning devices of Web's needle are luxuries, but letters—your letters I mean—are necessaries not to be dispensed with whatever their cost.

150 (To Miss Mary Holt.)

WASHINGTON *Jany. 18th*, 1887.

MY DEAR MARY.

* * * * * * *

I am happy to learn that your recollections of your visit here are so pleasant. I feel, however, that it was not so enjoyable as it should have been. I am thankful to you all for your brief stay under my

roof & cannot be too grateful for the sunshine you brought & left in my desolate home. If my life is spared, I hope to have the pleasure of welcoming you here, not once, but many times in the future. My house, like my heart will be always open to receive you.

Do not let our correspondence become in the least degree a burden to you. Write only when you feel in an epistolary mood & be assured that your letters, however, brief, will be always a bonne bouche for my hungering sympathy with your precious young life.

Let me know when your supply of wide ruled paper is exhausted & I will send you more. Love to your dear Mamma, if she is still in Louisville.

Your affectionate Uncle,

J. HOLT.

151 (To Washington Holt.)

WASHINGTON, *May 13th*, 1887.

MY DEAR NEPHEW.

* * * * * * *

The old home is a veritable oasis for me, & if there is gladness for me on the earth, I am sure to find it there.

* * * * * * *

I now enclose you a draft on New York for $1100, which I hope will come to hand safely & in good time. The day when the next installment will fall due the 20th of August will not be lost sight of.

* * * * * * *

Love to Vanda if she is with you & to Rosa.

Your affectionate uncle,

J. HOLT.

152 (To Mrs. Vanda Holt.)

SEPT. 16TH, 1887.

MY DEAREST NIECE.

* * * * * * *

Washington's letter was duly received & much enjoyed. As a chronicler of news, vigorous & trenchant, he certainly is a decided success. Tell him, when he has leisure, & is disposed to unbosom himself, I shall be always happy to hear from him in the same vein, & will heartily accord him the same thanks that I do now.

* * * * * * *

153 (To Miss Mary Holt.)

WASHINGTON, *Decr. 17th*, 1888.

MY DEAR MARY.

* * * * * * *

You say you had a real thanksgiving day, but omit to say where or how you passed it. This was disappointing to me. I must tell

you, as I have often told your dear Mamma, that I have a great fondness for *details*. Generalities, however glittering, do not satisfy me. Please, when writing, remember this, & respect the infirmity, if it be one, although you may not be afflicted with it yourself. My interest in you & Rosa may be too intense, & I may crave to know too much about your precious young lives, but it can't now be helped. So I must beg that you will kindly feed a hunger that cannot be otherwise stilled in its clamors.

I thank you for all that you have so sweetly said about our passing the coming Christmas together, but such a happiness is not in store for me. I shall be with you in spirit, most lovingly so. Indeed, in this role of *spiritual* attendance, I may be well said to be an inhabitant of the dear old Home the year round. I hope it will be for you the merriest of Merry Christmasses, so merry & soul feasting, that amid the years to come, through whatever pleasures and palaces your feet may be conducted, you will always recall with a full, loving heart the Christmass of 1888, passed in the home of your childhood. In none of your letters have you made any allusion to your *watch*. Is it behaving so badly as to be unworthy of mention? I hope not; but as it was guaranteed to be a perfect time-keeper, I am anxious to know something about its performances.

* * * * * * *

I heart full of love to dear Rosa & the same for yourself.

Your affectionate uncle,

J. HOLT.

154 (To Mrs. Vanda Holt.)

MAY 24TH, 1889.

MY DEAREST NIECE.

I reached home on Wednesday afternoon, having passed a day and night at Lexington. Could I have forgotten my separation from you & yours & the dear old Home my journey would have been one of unalloyed pleasure—,but, as it was, the shadows fell thick and fast around me. I cannot express to you the height or depth or intensity of my grateful sense of the ever multiplying kindness lavished upon me under your hospitable roof. Yours is truly a heart home and in it—in despite of some physical aches--I was as happy as are the bees in summer flower gardens.

I enclose a draft on New York for $700 as promised, but fear that it may fail to meet all your requirements. * * * If anything should occur while abroad, making it necessary for you to have more funds, do not hesitate to telegraph me, & the needed remittance will be at once made.

* * * * * * *

I will not ask you to send me letters of any length while abroad, for I know it will not be in your power to do so; but if you can occasionally write me a few lines—*no matter how few*—saying that you are well and happy, it will afford me immense gratification—indeed such words would be as refreshing showers for the parching

drouth with which my poor life is now threatened. Praying that angel wings may be ever over you & mary, whether upon the land or on the sea, I remain now & always, your loving uncle—

(Page 1173.)

(To Washington Holt.)

WASHINGTON *August* 21*st*, 1889.

MY DEAR NEPHEW.

* * * * * * *

If you will leave home on Wednesday, 4th Sept., you will
155 arrive at New York in time to give you two whole days Friday & Saturday for sight-seeing. Which I am sure you will be able to spend the more profitably & pleasantly, since your glimpses of New York have thus far been very hurried & necessarily unsatisfactory. Please do not fail to telegraph me from New York the road & train by which you will come, otherwise I shall be deprived of the great pleasure I promised myself, of meeting you all at the Depot here.

* * * * * * *

Your affectionate uncle,

J. HOLT.

(Rec., 1241.)

(To Mrs. Vanda Holt.)

WASHINGTON *Oct.* 2*d*, 1890.

MY DEAREST NIECE.

Your last lost precious letter has filled me with rejoicing. The news it brings that Washington has begun to improve has removed a mountain of anxiety & apprehension from my heart. Most warmly do I congratulate you. Be assured that with every throb of life I have sympathized with you both throughout the fearful sufferings you have been enduring & now that deliverance seems to be coming in sight I am glad as the night watcher on whom the sun has risen.

* * * * * * *

Love to all, your loving— UNCLE.

(To Mrs. Vanda Holt.)

WASHINGTON, D. C. *March* 22 | 91.

MY DEAR NIECE.

* * * * * * *

With love to Washington & Mary, I remain as ever your
156 loving un-le

J. H.

P. S. Should my case at any time become critical I shall wish to see you at once & will not delay saying so to you by the telegraph.

(To Mrs. Vanda Holt.)

WASHINGTON D. C. *April* 12, 1892.

MY DEAR NIECE.

* * * * * * *

Should my sorrows ever render your presence here indispensable I will not hesitate to say so.

Wishing you and yours a happy return to your beautiful home, & with love to all I remain, your affectionate,

UNCLE.

(To Mrs. Vanda Holt.)

WASHINGTON, D. C. *June* 26, 1892.

MY DEAR NIECE.

I am again at home. * * *

Let me beg that you will not grow weary of writing to me because unhappily I — no longer capable of responding as in other & happier days your letters are almost the only fountain left me in the desert of my closing life, out of which I can drink & be glad. Love to Washington & the children, you- affectionate uncle—

(To Mrs. Vanda Holt.)

WASHINGTON, D. C. *Feb.* 4, 1893.

MY DEAR NIECE.

* * * * * * *

157 I am glad that Mary came to Washington as she seems to be enjoying herself very much. Her visits are sunbur-ts for my darkened room & yet more darkened life. I have bitter sorrow that she cannot be under my own roof, but this — selfishness on my part, for she is doubtless better & happier where she is.

* * * * * * *

Love to all &c.

You- affectionate— UNCLE.

(To Wash. Holt.)

WASHINGTON, D. C., *June 26th*, 1893.

MY DEAR NEPHEW.

Your last letter was an agreeable surprise & received a most hearty welcome. Your handwriting alone was a gladsome sight to see, so long have my eyes been deprived of the pleasure of looking upon it. From what you say & in the tone of your letter I find an assurance that your health is much better than I have been fearing it was. The opinion of the Doctor that your trouble is not strictly paralysis is most encouraging & relieves me of much of the *inaful* anxiety from which I have been suffering.

* * * * * * *

With love &c.

Your affectionate uncle,

J. HOLT.

(To Mrs. Vanda Holt.)

WASHINGTON D. C. *Jan.* 13, 1894.

MY DEAR NIECE.

* * * * * * *

As the darkness closes in around me the sunlight of your pages seem to grow brighter & brighter day by day.

* * * * * * *

158 I am much encouraged by what you say of Washington condition and cheer myself from hour to hour by the strong hope that the sunshine and balmy airs in which he is bathing his faithful life will yet make him himself again.

* * * * * * *

As you are necessarily incurring unusual expenses this winter a remittance may become desirable. If so let me know. I can send you a draft on New York for five hundred dollars at any time it may be agreeable to you to receive it.

* * * * * * *

Of course you know the consolation I always find in your letters & the anxiety with which I await their coming, but you must not give me more than my share of your precious time.

* * * * * * *

With love to Washington & the children, I remain your affectionate Uncle.

159 The caveators further offered testimony tending to prove that Joseph Holt purchased two tracts of land in Kentucky and added them to the homestead farm, conveying them to Vanda Holt and to her children after death; that from 1873 until 1876 Washington Holt's family had lived at Cloverport, Ky., and since 1876 lived at the old homestead at Holt's Bottom; that upon Joseph Holt's repeated visits to the old homestead there were no family gatherings there, but that said visits were confined to Washington Holt and his family; that upon these occasions he did not visit Mrs. Iglehart, who was within two or three hours' ride from Holt's Bottom, nor Mrs. Bowmer, who lived within six miles away; that he rebuilt the house at Holt's Bottom, planted trees and flowers, beautified the grounds, at a cost of about $12,000; that he gave Vanda Holt $40,000 in Missouri State bonds; that he declared his life was a desert without an oasis until Washington Holt and his family came into it, and that after that he had something to live for. All of which testimony was given subject to the above-mentioned objection and exception and subject to the stipulation between counsel, entered into with the concurrence of the court, that the said objection and exception should apply to each item of the testimony so admitted over said objection.

Thereupon further evidence was admitted on behalf of the caveators tending to prove that between the years 1884 and 1893 said Joseph Holt on several occasions told Washington D. Holt that he, Joseph Holt, had made him, said Washington Holt, his executor;

that there would be ample means provided always to keep sheriff off; that the law had been pass- (allowing executor to qualify without giving bond) and all you will have to do now is to come on here and take possession of everything; that on visit of Washington Holt to Joseph Holt in the year 1893 Joseph Holt said to Washington Holt, "Washington, I want you to know that everything I have is yours;" that said Joseph Holt, during the same period, on several occasions informed Mary Holt and her mother, Vanda Holt,
160 that they would be much better off after his death; that they would then go to Europe; that said Mary Holt must become proficient in French, so that while in Europe she could act as their interpreter; that during the same period he told the servants in his house on divers occasions that said Washington D. Holt would have charge of his affairs after his death. To the admission of which testimony as to the declaration by said Joseph Holt touching the disposition of his property after his death the caveatees, by their counsel, objected before the same was given, on the ground that such testimony was incompetent for the purpose of throwing any light upon the question whether or not the said Joseph Holt executed the paper-writing in controversy, and that such testimony was incompetent and inadmissible upon the question whether or not the said paper-writing, if executed by the said Joseph Holt, was ever revoked by him, or upon any other issue in the cause, for the reason that under the rules of law revocation could not be shown in that manner; but the court overruled said objection and admitted the said testimony; to which rulings and admissions the caveatees then and there duly and separately excepted, and the court noted the said exception upon its minutes.

And it was stipulated by the counsel for the caveators and caveatees respectively, with the concurrence of the court, that the said objection and exception should apply to any and all other testimony of like character offered and admitted, without delaying the trial and encumbering the record by the reiteration of the said objection and exception.

161 The witness WASHINGTON D. HOLT further testified, against the objection of the caveatees and subject to their exception, upon the grounds hereinbefore set forth as to testimony of that kind, that there were peculiarities in the body of the alleged will, in the style of its composition, which indicated that it was not that of Joseph Holt; that it was not finished nor scholarly, and that the word "standard" was used, when the language would have been more elegant and expressive without it, and that he did not believe the said Joseph Holt would have used said word; that he never used a superfluous word.

The caveators further gave evidence to the jury tending to prove that about the year 1890 said Joseph Holt became afflicted with a progressive disease of his eyes which rendered it more and more difficult for him to read and write; that thereafter letters received were read to him by his servants, his replies were written by the servants at his dictation; that from this time until his death he

ceased his visits to Kentucky and lived in his house with his servants, receiving occasional visits from his friends; that about a week before his death he fell in walking downstairs and received injuries which confined him to his bed until his death; that William G. Sterett and his wife thereupon took possession of his house, being, with the servants, its only occupants until the next day, when they were joined by Washington D. Holt and his wife; that the servants gave Washington D. Holt the keys of Joseph Holt's desk and closet, where his private papers were kept, except such as were at the National Safe Deposit Co., which keys, under the said objection and exception of the caveatees, testimony was offered tending to show that said Joseph Holt had directed his servants to take, a few
162 days before his death, and deliver to Washington Holt and to nobody else; that said Washington Holt and William G. Sterett thereupon made a search among the said Holt's private papers in his desk and closet and in his safe-deposit box, but found no will or testamentary paper of any kind; that the body was taken to Kentucky for interment, immediately after which Washington D. Holt and William G. Sterett returned to Washington and made further and thorough search for a will, but found no paper of a testamentary character except a memorandum in his handwriting as follows: "I give and bequeath to the Washington Humane Society, incorporated by the acts of June 21, 1870, and Feb'y 13, 1885, the sum of — dollars;" that subsequently the trust officer of the National Safe Deposit, Savings & Trust Co. made a thorough search of all his papers, but found no paper of a testamentary character, except the will of 1848, and a memorandum on a rough piece of paper as follows:

Humane Society	$15,000
Children's hospital	4,000
Lodging-house	1,500
Emergency hospital, or dispensary	1,500
Associated Charities	1,500

The said testimony of the caveators further tended to show that during the search conducted by the said Washington Holt and William G. Sterett a number of private letters which said Holt had received from Washington Holt and family were burned in a coal scuttle in the yard by one Charles H. Strothers, one of the servants of the said Joseph Holt; that some old newspapers and circulars were burned in a fireplace by the direction of said Washing-
163 ton Holt and Sterett; that no other of his papers were destroyed after his death, and that the paper-writing in controversy was never seen by any of the relatives of Joseph Holt nor his servants until after August 26, 1895; that Washington D. Holt, William G. Sterett, and John W. Holt made two affidavits in September, 1895, in the orphans' court; that Joseph Holt died intestate; that upon said search all Joseph Holt's papers were found in methodical shape; that he was very methodical in the way he kept everything, and that his papers were found in a methodical and carefully kept condition, tied up in packages, and endorsed; that he was very methodical, knew just where he put everything, and

after the trouble with his eyes could always send a servant just to the spot where everything was that he wished to have.

The caveators further offered evidence tending to prove that Luke Devlin was a messenger in the office of the judge advocate general from 1862 until 1869, and performed the ordinary duties of such a messenger; that in 1869 he was promoted by said Holt to a first-class clerkship in said office, holding said position until February 7, 1873, and afterwards occupying a room separated by an intervening room from that of the said Holt, and did not come at all in contact with the said Holt in the performance of his official duties while he was clerk, and that there were never at any time any social or business relations between the said Holt and the said Devlin.

Thereupon the caveators examined as witnesses on their behalf PERSIFOR FRAZER and DAVID N. CARVALHO as experts in matters relating to the genuineness of writings, and their
164 evidence tended to prove that neither the signature to said paper-writing dated February 7th, 1873, nor any portion of the body of said paper was written by the same hand that wrote the letters of said Joseph Holt which had been put in evidence by the caveators and which were admitted by the counsel for the caveatees to have been written by said Joseph Holt; that the paper had been wholly or partly severed along a line just over the signature "J. Holt" by a knife or other sharp instrument; that afterwards the whole paper had been pasted on another piece of paper, and that a part of the flourish at the end of the signature "W. T. Sherman" had been erased with some sharp instrument. The evidence of said Carvalho further tended to prove that said instrument had been ironed to give it the appearance of age, and that the signature "Ellen B. E. Sherman" was written by the same hand that wrote the body of the instrument. Said Carvalho, in the presence of the court and jury, applied a liquid to one of the words of the paper, and thereupon declared that the ink was loaded with archil, which was characteristic of Arnold's chemical fluid, in which fluid archil has been used for the last ten years and not earlier; that archil, though an old compound, came into use as an adulterant of inks used in writing not more than ten or twelve years ago.

Said Carvalho further testified that he had compared the envelope in which the will was mailed to the register with the photographs produced by caveatees of certain lettering upon the Holt stable, which lettering, it was conceded, was done by Strothers; that the photographs evidently were made smaller than the stable and the lettering thereon, and that such letters so reduced were in-
165 capable of fair comparison with the envelope, and that he found nothing upon which to formulate an opinion which would be of any value; that the punctuation marks on the envelope showed no likeness or habit similar to the punctuation in the letters written by Strothers for said Holt; that where Strothers used a thick pencil it made large punctuation marks, and where he used a pencil with a sharp point it made very small punctuation marks.

Said witness, Frazer, further testified that the usual wide margin

between the upper edge of the sheet and the first ruled line was wanting in the paper purporting to be the will; that there is usually a wide margin between the upper part of the sheet and the first ruled line which is wanting; that the distance from the upper edge of the first ruled line is less than the distance between the two lines themselves on the will; that he did not know whether there was any regulation width for foolscap paper, and that he was not an expert in that line.

Thereupon MARTHA SCOTT, a witness on behalf of the caveators, gave testimony tending to prove that she was in the service of Joseph Holt as house girl from 1882 to the time of his death; that it was a part of her duty to answer the door bell, and that Mrs. Throckmorton, Sr., the mother of Major Throckmorton, frequently called.

And thereupon said witness was interrogated as follows:

"Q. What would occur when she would call?"

To which interrogatory the caveatees objected, on the ground that relations between said Holt and Mrs. Throckmorton, Sr., in the year 1882 and subsequently, could throw no light on the question as to the execution of the will, and that any unfriendly relations between them at and after said date was not competent evidence upon the question of revocation, and on the further ground that relations at said date existing between said Joseph Holt and Mrs. Throckmorton, Sr., were incompetent as against any party to the suit; but the court overruled the said objection and permitted the witness to testify that Joseph Holt would not see Mrs. Throckmorton, Sr.,
166 and that he gave witness orders not to bring her name to his room; to which testimony and to each and every part thereof the caveatees separately objected, upon the ground that testimony as to relations between said Joseph Holt and the said Mrs. Throckmorton, Sr., was not admissible upon the question of the genuineness of the will and as against any of the caveatees; that testimony as to such relations nearly or quite ten years after its date was incompetent and inadmissible upon the question of genuineness, and that said testimony was incompetent as to any of the other issues in the cause, revocation, if any there was, not being provable in that manner under the rules of law; but the court overruled the said objections and admitted the said testimony; to which ruling and admission the caveatees then and there duly excepted, and the said exception was duly noted at the time upon the minutes of the court, and it was thereupon stipulated between counsel for the respective parties, with the concurrence of the court, that all other testimony in the cause admitted by the court should be subject to the like objection and exception without reiteration of the same; and thereupon, subject to the said objection and exception, the caveators introduced testimony tending to prove that Mrs. Throckmorton, Sr., on several occasions sent flowers and fruit to Joseph Holt, who refused to receive them and sent them back; that subsequently to 1890, about the time of the court-martial, the said Joseph Holt declared that the Throckmortons were his enemies and that he did not wish to see them; that subsequently to 1892, at or

about the time Major Charles B. Throckmorton had been tried before a court-martial in New York, the said Joseph Holt said on two or more occasions that he was a scoundrel, and that he had gotten him out of difficulties before those resulting in his court-martial.

The witnesses George A. Johnson and Charles Strothers further testified that they had never heard Joseph Holt speak of Josephine H. Throckmorton, and the witness Martha Scott that she had never heard him speak of her unkindly.

167 Thereupon GEORGE A. JOHNSON, a witness produced on behalf of the caveators, testified that he was coachman for the testator from February, 1878, until December, 1884.

168 And thereupon, against the objection of the caveatees, on the ground that such testimony threw no light upon the execution of the paper-writing of February 7, 1873; that it was incompetent to offer such testimony upon the question of revocation, because revocation could not be established by proof of any change of relations or feeling between the testator and the beneficiaries or any of them subsequent to the execution of the will; and upon the further ground that a subsequent change of relations or feeling between the testator and the grandmother of Miss Josephine Throckmorton or of transactions between them could not be received as against any party to the suit, all of which objections were overruled by the court, said witness further testified that in the early part of his said employment Mrs. Throckmorton, Sr., and grandmother of Miss Josephine Throckmorton used to visit the testator and was upon very friendly relations with him; that he used to place his carriage at her disposal and have witness drive her whenever and wherever she wished to go, but that about 1880, on testator's return from a visit to Kentucky, he went to call upon Mrs. Throckmorton, Sr., and returning told witness never to allow her on his premises; that she thereafter called repeatedly, as often as once or twice a week for six or eight months, at said Joseph Holt's house, who said he would not see her; that witness told her on these occasions that testator was busy; that said Holt told witness afterwards that they were enemies of his; and subject to the said objection was interrogated and answered as follows:

Q. He said who were enemies of his?

Ans. Mrs. Throckmorton and her family, and he did not intend to see her or any of the rest of them.

Q. Who did he mean by them?

—. Mrs. Throckmorton.

Q. Or any of the rest of them?

Ans. Yes, sir.

Q. At the time the Judge said, "They are my enemies," had the children called?

A. They had.

And on cross-examination said witness testified that this conversation was at a time when witness told said Holt that Mrs. Throckmorton had called to see him; that she and the two children were

the only ones who called to see the said Holt after the quarrel, in so far as he remembered, and that when said Holt made said remark witness understood him to mean whoever was at the door. Said witness further testified on cross-examination that he found out in the house that the falling out was about Mrs. Washington Holt.

169 17*th Exc.*

And to the overruling of their said objections and to the admission of said testimony as to the relations with Mrs. Throckmorton after 1873 the caveatees then and there duly excepted, and said exception was duly noted at the time upon the minutes of the court.

Thereupon the said witness further testified that a year or two after the falling out he used to see Miss Josephine, who was then quite small; that she and her brother, who was a little boy, came to the testator's house; that testator said, "Tell them to go away;" that he would not see them; that witness told the children testator was busy; that they would play in the yard, eat apples and peaches, and go away; that Miss Josephine was then a little girl of twelve or fifteen years; that Miss Lizzie Hynes and her niece, Mrs. Ray, stopped at the house for a week or two on one occasion while witness was there; that testator made it as pleasant for them as it was possible to do; that he always spoke kindly of Miss Hynes, and that witness used to mail letters to her for him; that he does not remember taking Mr. Devlin's name to the testator nor hearing the testator speak of him; that he does not remember all the strangers who called.

170 Said witness, MARTHA SCOTT, further gave testimony tending to prove that Miss Josephine Throckmorton called at Joseph Holt's house about the year 1886 and remained about three-quarters of an hour with him in his parlor; that she went a second time about a year later; that Mrs. Washington Holt and her family were in the parlor, and Joseph Holt on that occasion saw her in his dining-room; that she called him *pere*, or something like that; that about the time of the court-martial she called again; witness took her name to Joseph Holt, who sent word he could not see her; that she then got the cook, Ellen Foster, to go up again and say she wished to see him for five minutes only, and that he then said he would see her for that length of time; that he was sick and in bed at the time, and she did not remain very long; that she called on another occasion when he was not at home, and that is the only occasion on which she called at the house, and that she never went there on two occasions, nor on any occasion accompanied by a white servant named Anna Tulley nor by any other person whomsoever.

As to Elizabeth Hynes, the testimony of the caveators tended to show that after 1873 she had visited Joseph Holt in Washington on several occasions, accompanied on two of them by her niece, Mrs. Mary McC. Ray; that she was always received and entertained

kindly and very affectionately by him; that they corresponded with each other by mail frequently; that the relations between them were those of unbroken kindness and affection until his death. The caveatee WASHINGTON D. HOLT testified that Joseph Holt informed him he had given Lizzie Hynes $10,000 in bonds; that she was a simple village woman, with simple ideas and inexpensive habits, and that the said sum was an abundance for her: that this
171 conversation took place shortly after the gift had been made, and Joseph Holt said he had given the bonds to her absolutely in order to make her relatives kind to her in the hope that they might inherit them at her death.

The caveators further offered evidence tending to prove that Joseph Holt stood high as a lawyer in Mississippi, and was on one side or the other in important cases, especially in criminal cases; that in 1862 he was appointed judge advocate general of the Army of the United States, and held that office until December 1, 1875; that the caveatee Luke Devlin was a messenger in the office at the time of his appointment, and continued a messenger until the year 1869, filling the ordinary duties of a messenger in a public office; that in 1869 said Devlin was promoted by the said Joseph Holt to the position of a first-class clerk in said office, and continued in said office until the retirement of the said Holt therefrom; that his duties were performed in a room separated from the room occupied by the judge advocate general by an intervening room, occupied by the chief clerk; that he did not come in contact with said Joseph Holt in the performance of his official duties; and Col. WINTHROP, one of said witnesses, testified that said Devlin's relations with Judge Holt were very friendly and kindly, but were those of a messenger, and that no social or business relations were observed between them between 1862 and February 7, 1873; that after Dec., 1875, said Devlin never visited said Holt, and that neither the servants nor the friends of the latter who were frequently with him ever saw them together after that date nor heard said Holt mention the name of said Devlin.

172 Thereupon, further to maintain the issues on their part joined, the caveators introduced as a witness on their behalf JOHN B. RANDOLPH, who testified that he had been for over thirty years employed in the office of the Secretary of War, including in his period of service the time when U. S. Grant and William T. Sherman were Secretaries of War and while the said William T. Sherman was General of the Army; that he was perfectly familiar with their signatures and had recently examined them; that the signature of General Sherman was a passably good imitation and that of the said Grant as a witness to the will was a very poor imitation of his signature, in witness' opinion, and that, in his opinion, neither signature was genuine, and, upon cross-examination, that during the war General Grant wrote the word "Grant" with a plain dash over the "t," a small signature; that the word "Grant" had an upward tendency, while he wrote it very nearly straight, and that when older he wrote a bolder signature, with a flourish over the "t," in 99 times out of 100, and the "t" was of a more pro-

nounced character; that the "U" was smaller than in his signature between 1871 and 1875 and the "U. S." longer, and that both the upstroke and the downstroke in the letter "S" slanted more than in his genuine signatures; that in the genuine signature of General Sherman, in the long quirl to the capital "T," the upper and lower line met; witness never saw one in which they did not meet, and he had seen thousands of them; that in the signature "Sherman" General Sherman made the final quirl below the name straight back without any tremor or appearance of nervousness; that there was no tremor in any of the lines as in the signature to the will; that, in his opinion, the said signature to the will was not in the handwriting of General Sherman, and that witness' reasons for so thinking were the formation of the letter "T" and the said tremor; that in his genuine signature the General carried the loop in the word "Sherman" down; that the "S" in said word differed also
173 from the genuine "S," as witness recalled it, in the little stroke at the lower part of said "S" where the upward stroke crosses the staff; that it should not make so much — a loop nor so pronounced a loop as in the will.

Said witness, on further cross-examination, testified as follows:

Q. I understand you to say that in these long lines, whether in the stroke above the "t" or in this sweep below the name "Sherman" in the genuine signatures, there is no sign of tremor?

A. No, sir.

Q. Do you notice signs of any tremor there?

A. I do, sir.

Q. And that is one of the reasons that induces you to believe that that is not genuine, I take it?

A. That and the formation of the letter "t."

Q. What is the peculiarity about that?

A. I described that—it is the upward stroke there.

Q. That is, he continues the upward stroke of the "W" and makes the top of the "T" with it?

A. Yes, sir; that is it exactly.

Q. And, in your observation and experience, the upper line in that upward stroke always touches the lower line?

A. Yes, sir; in four out of five.

Q. And there is no appearance in any signature that you have ever seen of any tremor?

A. No, sir.

174 & 175 Thereupon the caveators further produced as a witness in their behalf one J. O'T. McCarthy, who testified that he was an artist in handwriting; that he had seen two signatures of Mrs. Gen. Sherman in 1877, one of which was written in his presence; that he had compared these signatures together, and could not testify unless allowed to state the results of this comparison; that he had no impression about the genuineness of her signature except as he took her signature with papers in his possession and compared them with the name on the will; that his only means of forming an opinion was comparing the signatures in his

possession with the name on the will; that he had an impression upon his mind that he had brought the papers as a guide, for the purpose of making a comparison; that he had looked at the signatures in his possession, which he knew to be Mrs. Sherman's; had refreshed his mind by her signatures, and that there was a radical difference between the signatures he had and the signature on the will.

176 The caveators further introduced as a witness on their behalf CHARLES H. STROTHERS, a servant of Joseph Holt during the last years of his life, who testified that the eyesight of the said Joseph Holt during his latter years rendered him unable to write, and that witness and his wife wrote letters for him, which letters were identified; that he did not remember how said Holt commenced his letters to Miss Hynes, whether My dear friend or Dear Elizabeth or which, but that it was not "Lizzie," and that he never called her Lizzie in writing, to witness' remembrance. The
177 periods in the form of blind circles in said letters were witness' punctuation; that Luke Devlin called at witness' pool-room, near the B. & O. depot, shortly after the will was published in the newspapers, and said there was "a pretty little pile in it for" him; that witness thought Washington Holt was under the impression that witness destroyed the will; that witness burned up about twenty-five letters in the coal-scuttle in the yard a week or two after death of Joseph Holt, by direction of Sterett and Washington Holt, and saw some newspapers and circulars burned in the grate in said Holt's bed-room; could not say whether any letters burned there or not; that they were burned one chilly day to make a fire, and the fire was kept up with them; that Joseph Holt never burned anything and reproved witness for burning a spoiled check, telling him to burn nothing; that witness saw the alleged will in the register's office shortly after it was found, but had no prior knowledge; had had nothing to do with sending it in; that witness was put in charge of the property and lived there with his wife and mother ever since shortly after the death of said Joseph Holt; that he rented the stable and applied the rent money to his own purpose; that he paid no rent for his occupation of the property; that he used said stable for a wood and coal business and had himself lettered the same with signs relating to said wood and coal business and identified as correct certain photographs produced by the caveatees, showing said stable and lettering thereon; and thereupon the caveators rested.

178 Thereupon the caveatees, in rebuttal, offered testimony as follows:

Mrs. FANNIE RICKETTS, a witness on behalf of said caveatees, testified by deposition that she was a guest at a dinner given by said Joseph Holt in February, 1873, at which dinner President Grant, Mrs. Grant, and General and Mrs. Sherman were also present; which dinner was within a month of the second inauguration of President Grant; that Secretary of State Hamilton Fish, Mrs.

Fish, and three other persons, whose names witness did not recall, were present at said dinner; and in answer to the formal final interrogatory said witness further testified that she heard said Joseph Holt speak with bitterness of Mrs. Throckmorton, Sr., on two occasions some years subsequent to the said dinner, one of these occasions being a reception given to Secretary Blaine.

179 Thereupon ANNA TULLEY testified that she was a domestic in the service of Mrs. Throckmorton, Sr., in 1891; that Miss Josephine H. Throckmorton visited her; that on two occasions, when it was getting dark, Miss Josephine had witness accompany her to testator's house; that on the first of these occasions the colored girl said, after taking card up, that testator would see her in his room, and she went up, staying near an hour, witness remaining in the hall; that on this occasion testator came down with Miss Josephine to the door that leads to the porch, bade her good-bye affectionately, told her to come again; that he was always glad to see her; that on the second occasion the girl told Miss Josephine the testator was expecting her and to go right up to his room; that as Miss Josephine was leaving testator called her back, said he had forgotten something, handed her a little package out of his pocket, kissed her affectionately, and told her to give his love to her father, mother, and brother, who were then at Fort Schuyler; that
180 he was a smooth-shaven-faced gentleman, very old and feeble; that the girl was the witness Martha Scott, and that these visits were prior to 1892.

Thereupon the caveatees offered evidence tending to prove that Joseph Holt always manifested a kindly feeling towards Mr. Devlin while he was filling the position of messenger; that during that time he talked frequently about him; always regarded him as a faithful man and was very fond of him; that after he was messenger he spoke of him frequently and kindly; that on several occasions, when discharged from the position of enlisted service to that of a civilian clerk, said Joseph Holt wrote, unsolicited and unrequested, endorsements of him in the words and figures following:

181 "*Character.*

BUREAU OF MIL JUSTICE *Septe* 3*d* 1869.

The character of Luke Devlin while on duty in this bureau has been most excellent. He has been faithful & zealous, & has enjoyed my A. G. O. No. 98 fullest confidence.

J. HOLT,
Judge Adv. General.

"*Character*

BUREAU OF MIL. JUSTICE. *July* 23*d*, 1874.

Luke Devlin has been on duty in this Bureau some thirteen years, first as messenger, then as civilian clerk, & afterwards as enlisted into the general service & detailed here for clerical labor. His conduct throughout this long service has been most excellent.

Thoroughly qualified for his duties he has performed them at all times, with fidelity & zeal.

J. HOLT
Judge Adv General."

"*Character.*

BUREAU OF MIL. JUSTICE, *Feb'y 5th* 1868.

Private Luke Devlin during his enlistment has been on duty in this Bureau. His character is excellent, & the services incident to his position have been performed with zeal & fidelity.

J. HOLT,
Judg eAdv. General."

182 And that in the year 1867 the said Joseph Holt suggested to said Devlin to apply for a lieutenancy in the regular army and wrote a letter to the Secretary of War in his interest in the words and figures following:

" WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,
WASHINGTON, D. C., *March 26th*, 1867.

Hon. E. M. Stanton Secretary of War

SIR Learning that the name *Luke Devlin* is before you, on an application for appointment to a 2d Lieutenancy, I deem it but an act of justice to him to state that he is a young man of excellent character & conduct, who for some five years has been on duty in this office as messenger & also frequently performing clerical service, for which he is well qualified. He is faithful & capable, & well deserves the confidence, which has been constantly reposed in him.

Very respectfully
Your obt servt

J. HOLT,
Judge Adv General."

183 The caveatees further produced as witnesses Mrs. FRANK EVANS, Mrs. SARAH A. TERRY, employees of the register of wills' office, and HENRY W. SOHON, a member of the bar, who testified that they saw the alleged will on the day that it reached the register's office; that they examined it carefully, and that the lower fold at that time had not been separated from the rest of the paper; also Dr. WILLIAM M. GRAY, microscopist at the Medical Museum, who testified that he first saw the will in February or March, 1896; that he subsequently made enlarged photographs of it, produced and exhibited by him, to determine whether the lower fold had been separated from the rest of the paper, and that at the time of such photographing the separation was still incomplete, there being then still some fibers not torn apart.

Thereupon the caveatee LUKE DEVLIN gave evidence tending to prove that at the interview with Strothers, testified to by the latter, witness did not say there was "a pile" in the will for him, but that there was a high compliment; that he had not seen Miss Jose-

phine Throckmorton between the spring of 1887 and the month of October after the will was found; that he had no interviews or correspondence with her father or mother since 1887, and no interviews or communications with her grandmother since 1890, until after the finding of the will.

Thereupon ELIZABETH HYNES was recalled as a witness on behalf of the caveatees and gave testimony tending to show that she did not remember either her father or mother; that, at her earliest recollection, she was living with her uncle, Dr. Harrison, whose family consisted of himself, his second wife, his daughter Mary, who
184 afterwards became the first wife of Joseph Holt, and her said uncle's two sisters, Sarah Harrison and Fanny Harrison, who were named in the will of 1848; that witness' first cousin, Mary Harrison, took her in her care, and was always in the place of a mother to her as far back as she could remember; that she first knew Joseph Holt when he became engaged to Mary Harrison, witness being then about five years old; that he was always kind and affectionate to her; that she was always taught by her cousin Mary until the marriage of the latter, after which Joseph Holt sent her to school; that after the marriage said Holt told her he had promised her cousin that he should take witness and care for her as his little child, and that she was then his little girl; that he sent her to school, paying her school charges and expenses of every kind from the time of his marriage until the time of his death, except that she lived for some time with her married sister, the mother of Mrs. Ray, during which period her brother-in-law refused to permit her to pay any board; that Joseph Holt always supplied her abundantly with clothing and money, stating he wished to support her handsomely and desired her not to be sparing in her expenses; that her cousin died in 1846 and Joseph Holt married a Miss Wickliffe about 1850, often going to see her after his second marriage and sending for her to see and stay with him on his visits to his second wife's home in the vicinity; that his second wife died about 1860; that in 1861 he took her with him to Boston; he made his famous Tremont House speech while witness stood by his side, and that he then took her to Albany, New York city, Philadelphia, Niagara, and brought her back to her home in Kentucky; that the following year he took her with him
185 through Montreal, Quebec, Toronto, and other points, returning by Niagara Falls; that at Toronto she, at his request, as his representative, met a large number of people who tendered him a reception, he being too ill to meet them in person; that he took her some nine or ten times to Niagara, the last visit being, she thought, about 1885 or 1886, though she was not positive; that she visited him in Washington in 1861 and again in 1882 and 1884, and that she visited another friend in Washington on two occasions in 1884, on each of which occasions she was a great deal with said Holt, he visiting her, taking her driving, sight-seeing, and that she last visited him in 1891, when his health was very poor, but when he visited her; that he often spoke of Major Throckmorton,

his wife, daughter, and son, always affectionately and kindly; said the major was a man of principle and honor and a brave soldier during the war; said that he loved Josephine as his own child, and that she was very fond of him, often put her arms around his neck; that she had won his heart; that he sometimes called her "Josephine," sometimes "My child," sometimes "My namesake," and that he taught her to call him "Bon Pere;" that on the last visit to Niagara he purchased a picture of the falls and other presents for her; that Joseph Holt had told her the difficulty between Mrs. Throckmorton, Sr., and himself grew out of the fact that Mrs. Throckmorton had said that Major Throckmorton's wife had told her that witness' cousin, Florence Hynes, had told her that witness had received an affectionate letter from him, had ridiculed it, and called him an old fool, which story her cousin Florence and Mrs. Major Throckmorton had both denied; that he did not
186 believe Mrs. Major Throckmorton had made such a statement, and that he wished witness to think no more about it, and that in 1873 witness had no friends or acquaintances in Washington except Joseph Holt.

Said witness further testified that in the spring of 1884 Joseph Holt visited her at the house of Mrs. Ray, her niece; gave her $10,000 in District of Columbia 6% bonds, stating that he had on several occasions forgotten to send her money just when she needed it; that he did not wish her to confine herself to the income which the bonds yielded, but to write him for money whenever she wished more; that she did so write, and he sent her further moneys in checks, post-office orders, and money in envelopes; that in the summer of 1884, while visiting his house, he drew his chair up to hers, the day before her return to Kentucky, and said, "I want to talk with you; I have never talked to you seriously about this matter, but I want you to remember you are amply provided for besides the $10,000 I have given you;" that in reply to a question of hers as to what his relatives would think he answered that they had no right to object; that they were all independent of him and did not need it; that he had made his money with his own hands, and that he certainly had a right to do what he pleased with it. Said witness produced a letter, conceded by counsel for caveators to be in the handwriting of Joseph Holt, dated February 24, 1885, addressed to her as "My precious cousin," and containing, among other things, the following: "You cannot rejoice in your independence more than I do—I trust that it will be hereafter in my power to make you yet more so. I should be very wretched, indeed, if I thought you would ever be left to the tender mercies of the world, which in its selfishness, turns its back on the helpless, but is profuse in its offer of assistance to those who do not need it.
187 Have no fear—you are safe now, but will be safer in due time. Please read the papers I send you in regard to the dedication of the monument. They are very interesting & instructive. As ever, your devoted cousin."

Said witness further testified that on several other occasions said Joseph Holt again spoke to her about the $10,000 gift and said that

he had already provided amply for her besides that sum, the last of these conversations taking place in 1891.

On cross-examination said Elizabeth Hynes testified that, as a general thing, prior to the time when he gave her said bonds said Joseph Holt remitted her always $50 a month, and that if she needed more after that she would write to him for it; that the interest on the bonds amounted to $600 a year; that she did not think there was any change in the amount of money he sent her after he gave her the bonds; that he kept sending her pretty much the same amount. The witness' attention was then called to certain memorandum books, which she testified were in the handwriting of Joseph Holt and which contained entries in his handwriting from day to day from the year 1884 to December, 1891, of his expenses and cash paid out for all purposes. Being further cross-examined, the witness then said that she did not remember whether said Joseph Holt gave her any money between June, 1884, and April, 1885, but she thought he did; that she did not remember whether between the 23rd of April, 1885, when he gave her $30, and the month of July, 1887, he gave her in any way a dollar, but that he may have sent her money; that he gave her money whenever she met him, and that she did not know whether he did or did not give her money during that period; that her last trip with Joseph
188 Holt to Niagara Falls was in the summer time and was either in 1885 or 1886; that she thought that between July, 1887, when he paid her $50, and April, 1889, Joseph Holt had paid her some money, but would not be sure of it; that he always gave her money when she wanted it; that perhaps she wrote to him for it; she did not know; she could not be clear about it; that she could not say whether during the year 1889 he gave her more than $65, nor whether during the year 1891 he gave her more than $180.

Thereupon, by consent of counsel, the cross-examination of Elizabeth Hynes was suspended, and LEE M. LIPSCOMB, being examined as a witness in surrebuttal on behalf of the caveators, testified that he is employed in the office of the Auditor of the Treasury for the Post Office Department; that to that office money orders come from the different post-offices, and that he made an examination to see what money orders were sent to Lebanon, Ky., from Joseph Holt or J. Holt to Elizabeth Hynes between April, 1890, and August 31, 1894, and that the only such money orders on file were of the dates and amounts following:

July 2, 1889, $50.
October 3, 1890, $15.
March 21st, 1891, $50.
June 8, 1891, $30.
July 16, 1891, $50.
September 2, 1891, $50.
March 29, 1892, $50.
August 7th, 1892, $20.
September 19th, 1892, $20.
December 28, 1892, $50.

189 March 18, 1893, $25.
July 12, 1893, $30.
December 16, 1893, $25.

Thereupon said ELIZABETH HYNES, being recalled for further cross-examination, identified her signature "Elizabeth Hynes" to the receipts appended to said money orders, and she further testified on cross-examination that shortly prior to January 1, 1886, she, being then quite ill, wrote to said Joseph Holt that she wanted to dispose of what he had given her, and asked him if he would prepare a will for her; that thereupon he wrote a will for her and sent it to her, telling her to copy it in her own hand and return it to him for approval; that she thereupon returned to him both the will which he had prepared and the copy which she had made; that he kept the original and returned to her the copy; that she had executed that will and still has it; that she did not leave her niece, Mrs. Ray, anything by that will, because said Joseph Holt wrote the will in that way; that he said Mrs. Ray was married and had a husband, and the other two nieces of witness were young and had very little, and he wanted her to leave it to them, and that, as a matter of fact, the will which said Joseph Holt had so drawn for her left out Mrs. Ray and her family, and that said will was dated January 1, 1886. Thereupon, at the request of counsel for the caveators, the witness produced said will, and it was offered in evidence by counsel for the caveators, and is as follows:

"I Elizabeth Hynes, of Lebanon State of Kentucky knowing the uncertainty of life and the certainty of death, and being of sound mind and disposing memory do make and publish this my
190 last will and testament, hereby revoking all others made by me.

Being the owner of twenty bonds of five hundred dollars each issued by the district of Columbia on the first day of November eighteen hundred and seventy-two, payable thirty years after date and bearing six per cent interest, I hereby give and bequeath the said bonds to my two nieces, Lydia McChord and Lizzie McChord both at present of Lebanon Kentucky and direct that they shall be equally divided between them on my death by my executor. Said bonds are now deposited with the Fidelity Trust and Safety Vault Company in the city of Louisville, Kentucky.

As my other niece, Mrs. Mary Ray is married and so her life is provided for I do not deem it necessary or proper that she should share in the division of my property before made between her two younger sisters, whose means are extremely limited and who will greatly need assistance I propose giving them.

I appoint as executor of my last will and testament, with full power to carry the same into effect, R. H. Rountree esq of Lebanon Kentucky.

In testimony of the aforesaid last will and testament which has been written wholly by my own hand, I hereinto subscribe my name this the first day of January, eighteen hundred and eighty-six.

ELIZABETH HYNES."

On redirect examination the witness testified that her last visit to Niagara Falls with Joseph Holt was after he gave her the $10,000 in bonds; that after he gave her those bonds hardly six months passed without he would give her money or send it to her.

191 And thereupon the caveatees produced as a witness in their behalf Mrs. MARY MCCHORD RAY, who testified that she is a niece of Elizabeth Hynes; that Joseph Holt used to take Miss Hynes on long trips to Niagara Falls and other places and would visit her in Kentucky; that in 1884 he visited Miss Hynes there, at witness' house, and gave her $10,000 in bonds, stating that he had forgotten to send money with regularity; that he did not wish her to think that was all he intended to give her, but she was to write to him whenever she wished more money; that he had always tried to treat her as a child of a father who had plenty of money; had promised his wife to do so and expected to continue to do so as long as he lived; that there was plenty for both himself and her, and when he died he expected to leave her independent of everybody.

Said witness further gave testimony tending to prove that in 1882 Joseph Holt told her that his first wife's father had been the guardian of the said Lizzie Hynes and in some way had lost her property; that his wife before their marriage had been in charge of Lizzie, and said Holt had promised upon their marriage to take and care for her, and that upon her death-bed she had asked and received a promise from him always to take care of Lizzie, and that he intended to treat her as if she were his own daughter. Said witness further testified that she and her said aunt visited Joseph Holt in the summer of 1884, shortly after the gift of the $10,000 bonds; that he was unwell during the greater part of their visit, and that before they left he said to her aunt, in her presence, that

192 he wished to talk with her; that he did not know whether he should ever see her again or not; that he wished her to know the $10,000 was not all he expected to give her, and that he had fixed his business affairs in such a way that when he was dead she would be abundantly provided for, and that she should feel safe, and that at this interview, in reply to some reference by her aunt to his relatives, the said Joseph Holt replied that he had made his own money; that they were independent of him, and that they would have nothing to say. Said witness further testified on cross-examination that in this conversation in regard to his relatives his tone was not that of unkindness; that he said nothing further as to the disposition of his property; that Miss Hynes' nearest relatives are the witness, her two sisters, and five brothers; that witness had never had an unpleasant word, by letter or otherwise, with Joseph Holt, and that at her request he had loaned her husband $4,000, which money was subsequently collected by legal process through Mr. Washington Holt.

193 & 194 The witness was thereupon shown by the caveators a paper found among the papers of the testator after his

death purporting to be a copy of a letter written by him to her said husband on the 11th day of January, 1886, who testified that the said paper-writing and the endorsements thereon appeared to be in the handwriting of the testator, but that she had never seen such a letter and did not know whether her husband received such a letter or not; and thereupon the caveators offered the said paper-writing in evidence; to the admission of which the caveatees objected, first, upon the grounds stated in the preceding exception, and, in addition thereto, upon the ground that the said letter relates to a controversy between the testator and witness' husband, who is not a party to the suit nor connected by blood with any party to the same, and upon the ground that the said paper-writing and the controversy to which it relates are collateral, remote, and inadmissible; but the court overruled said objections and held that
195 the said paper-writing was admissible upon the question whether or not, under all the circumstances, the testator would have allowed such a will as that in controversy to stand under the possibility that some portion of the property which would pass thereunder might ultimately go to the said Nicholas Ray.

20th Exc.

And the caveatees then and there duly excepted to the ruling of the court in admitting the said letter in evidence, and the said exception was noted at the time upon the minutes of the court.

The said paper-writing was thereupon read in evidence as follows:

WASHINGTON *Jany* 11*th*, 1886.

Mr. Nick Ray,

SIR. In your brief letter of the 10th ult. you said "you certainly shall not lose anything by me & your money shall all be paid with interest." There was a time when this language would have afforded encouragement, but, in view of your *acts*, which speak much louder than your words—it seems little less than a mockery. I now learn from Mr. Roundtree, that after having promised to pay him $2,000, and thus take up your note for $4,000, within thirty days, you have wholly failed to do so, & have offered no reason for or explanation of this deliberate breach of faith while this has not at all surprised me, it must be confessed that I am at a loss to conjecture any decent excuse for your having practiced on Mr. Roundtree a deception, at once so senseless & so gratuitously insult-
196 ing. You have thus declared in effect, that you do not regard your note as worth taking up, & have intended perhaps to let me know in this unmistakable manner the ultimate fate of the loan—a fate which, in all likelihood, was foreseen & determined upon from the beginning. Under the generous proposal made to you, I offered to submit to a loss of $2,000, for having in good faith endeavored to serve you, which you would have been a clear gainer of $2,000, on the *same* operation—thus assuring to you a margin of profit on the transaction, which it was thought could

hardly fall below your expectations. Whatever depreciation your note has suffered, is due solely to your *own* conduce, of which, I will now speak with entire frankness.

This money was loaned to you with a distinct understanding that it was to be employed in establishing you as a partner in a mercantile firm then being formed & with the further understanding that you were with this capital to continue in mercantil- life, for which you were believed to be well qualified. This intimate association of the partnership with the loan, is sufficiently indicated, by the terms of the note itself, which is payable on the expiration of the partnership, being five years from its date. There was no personal security, but as the mercantile business is not a speculative or stock gambling one, I felt in view of this, & of your experience and qualifications, that I had a reasonable guaranty for the return of the money. Had it been said that the funds would or might be diverted into some other & indefinite enterprise or investment, I would unhesitatingly have refused to make the loan, because I was not in a condition, financially, which would have justified
197 me in running any such risk. After fully, by your letters, recognizing the interest this condition of things gave me in your firm, & after giving me an account of how you were getting on & promising to report further "after taking stock"—which you never did—you, some months afterwards, without consulting me or giving me the slightest notice, dissolved the partnership, gave to the funds an unknown direction, and withdrew yourself from mercantile life—thus cutting up by the roots the only guaranty I had for the payment of the money or the interest accruing upon it. This was in deliberate violation of the trust involved in the loan, & was done not only without notice to me, as I have said, but you have carefully refrained from that time, from writing me a single line, explanatory or otherwise, in regard to the unexpected & extraordinary course you have pursued. After having broken up and abandoned the business for which, and for which alone the money had been committed to your hands, you should, as a man of honor, have returned it at once or at least have consulted with me as to the disposition to be made of it, instead of endeavoring to conceal from me what you had done. More than this, when Mary, realizing how much my interests were concerned, in what you were doing, wished to write to me, you prevented her from doing so, saying that you would write yourself, and afterwards saying again and again that you had written, which you well know you had neither done or intended to do. Thus I have been and am still left by you in profound ignorance of the grounds of your actions, of all its details, and notably, ignorant of the purposes to which the money has been applied. This is very significant.

198 To such an extreme did this reticent and secretive policy proceed on your part, that, when on the fourth day of November last, I wrote you, asking whether you intended paying the October interest (then in default) on your note, and referring to what you had done—of which some account had reached me, through a reliable channel, claimed an immediate reply, you treated my

letter—for which I hold your receipt, with silent contempt in shameless disregard. I will not say of the courtesies only, but of the decencies even of social and business correspondence. This treatment is the return made me, for having, at some sacrifice, sold bonds on the interest of which I was in part living, in order to raise the money, which, without exacting security was advanced to you in the hope that with diminished and less arduous labors your enfeebled health, so feelingly portrayed by your wife, would be strengthened and restored. Of course I should be idiotic not to comprehend, which I do perfectly, both the animus and the consciousness, which have prompted a course so persistently secretive as necessarily to suggest methods which shrink from the light. This whole affair has proved for me a most mortifying revelation of yourself and affords a saddening glimpse of the downgrade on which your life has entered.

The long extension of the loan, after the security, which was looked to for its payment, has been swept away, which is the result of the blind confidence I was led to repose in you, gives you a great legal advantage over me, which you doubtless appreciate at its just value. Recognizing myself the legal advantage thus gained
199 by you, I do not address you now with any thought of bettering my condition, but solely to let you know, in the most emphatic manner, that you are thoroughly understood.

Yours, &c.

J. HOLT.

(Endorsement as follows:)

The original of this letter was this day mailed in a registered envelope for Nick Ray.

(Signed) J. HOLT.

Jan. 11th, 1886.

(In pencil:)

No reply recd.
J. H.

200 & 201 And in connection with said letter and against the said objection and exception of the caveatees the caveators offered, and the court admitted, a paper purporting to be a promissory note for $4,000, dated October 1, 1884, signed by the witness' husband, with endorsements thereon purporting to be signed by said Joseph Holt, the endorsements on which note the witness testified were, in her opinion, in the handwriting of said Joseph Holt. The said note and endorsements were as follows:

LEBANON, KY.

$4,000.00.

Five years after date I promise to pay to Joseph Holt four thousand dollars for cash loaned, with six per cent interest from date. Interest payable semi-annually, the first of each April and October.
October 1st, 1884.

(Signed) NICK RAY, JR.

(Endorsements as follows:)

The six months interest $120 accruing 1st April, 1885, has been paid.

(Signed) J. HOLT.

Decr. 1885. The six months interest due 1st October, 1885, $120 has been paid.

(Signed) J. HOLT.

Nove. 25th, 1885. Original of this note sent to R. H. Rountree, Esq., Lebanon, Ky. for professional action.

(Signed) J. HOLT.

The original of this note having been returned to me, was again, on this day, 11th Sept., 1886, sent again to Mr. Rountree for the collection of the April & October, 1886 installments of interest.

(Signed) J. HOLT.

202 The caveatees thereupon examined as a witness in their behalf HARRISON B. HODGES, who testified that he was a chemist, an expert in inks, having been consulting and analytical chemist for Carter's ink firm and in charge of the labaratory of quanti-ative analysis and lecturer on industrial chemistry at Harvard University; that archil is supposed to be known as a dye as far back as the time of the Greeks and Romans, but is not used in the manufacture of black inks or as an adulterant, it being far more costly than the aniline dyes and making a far inferior ink because a recognized fugitive and fading rapidly; that the aniline or coal-tar colors were introduced in 1856 and have since been used almost exclusively except for calico printing, blue dyeing, and the like; that it is impossible to determine whether a writing ink contains archil or to justify any definite statement as to its composition from the mere application of the liquid professed to have been used by the expert Carvalho, namely, muriate or chloride of tin, but that the application, first, of hydrochloric, sulphuric, or dilute acid, and then a solution of a ferro-cyanide of potassium, would produce Prussian blue if the ink were an iron ink, or a reddish tinge if it were a logwood ink. Whereupon the said Hodges, in the presence of the court and jury, applied the said chemicals to portions of the writing on the alleged will, producing a blue color, and thereupon testified that the ink was an iron or nut-gall ink, and that there was nothing about it whatever to indicate that it contained archil, and, further, that the indications were that inks made within the last fifteen years would contain aniline blue, it having been known to be a very valuable ingredient in inks, but that no trace of it was discoverable from his said experiments.

203 Thereupon the caveatees produced as expert witnesses on their behalf EDWIN B. HAY and WILLIAM E. HAGAN, who gave testimony tending to prove that the same hand which wrote the letters of Joseph Holt which had been put in evidence by the caveators and caveatees wrote the will; that there was no evidence of simu-

lation or to indicate that the writing of the will had been done hesitatingly or slowly; that it was written free and without effort, and that, after having examined every line and letter of the will in the text and signature, it was not a traced writing, and that there was no indication in any of them of tracing; that there was no evidence of "ageing;" that the letter was written upon paper made entirely of rags and of a kind which had been in use for thirty or forty years; that where ironing has been resorted to to give an appearance of age the appearance of the ironing remains under microscopic examination, for the reason that the fibers of the paper follow the direction in which the iron was moved, and that upon microscopic examination of the will no such appearance at all existed.

The said witness, Hagan, further testified that he had served an apprenticeship to a manufacturing chemist engaged in the business of manufacturing inks and had charge of the manufactory from 1845 to 1849; that he had since made repeated examinations of inks and had continued his acquaintance with their manufacture; that archil was used in said manufacture as far back as 1848, but had long ago been replaced by aniline colors; archil inks had not been sold in this country, to witness' knowledge, for twenty-five years; that the bleaching of ink by muriate of tin would not
204 show the presence of archil, and that it was impossible to detect its presence in that way; that archil inks fade and are not permanent; are destroyed by frost; that archil is much more expensive than aniline dyes, and that the latter are superior in all their qualities for the manufacture of inks.

Said witness further gave testimony tending to prove that the person who wrote the signature "Ellen B. E. Sherman" did not write the body of the will; that there was not a word in the will written with a pen pressure approaching the penmanship of that signature; which signature is in the conventional copy-book form.

On cross-examination said witness, Hagan, admitted that a skilled expert could imitate the handwriting of another so that an ordinary observer could not detect the difference unless it was explained to him and shown to him under a miscroscope, and that the science of forgery had got down so far that it takes an expert, with his miscroscope, to detect it when it is well done.

The said witness, Hagan, further gave testimony tending to prove that they had examined the lettering upon the Holt stable testified to by the witness Strothers as having been done by himself, and also the letters introduced in evidence as having been written by Strothers as amanuensis for the said Holt, and that he had further examined the photographs of the lettering on said stable which had been introduced in evidence and identified by said Strothers as photographs of the stable and his lettering thereon; that where lettering is photographed of a smaller size, but the proportions are maintained, such photographs afford a fair basis of comparison, and he had compared said lettering and writing with the envelope in which the will had been forwarded to the register of wills; that there were striking points of resemblance between the lettering and punctuation in question on the stable, on the envelope, and in the

letters so written by said Strothers as amanuensis, and that, in his opinion, all of said writing and lettering had been done by the same hand.

205 Said witnesses further testified that they had examined, both under the microscope and otherwise, the alleged will in January, 1896, and that the fibers between the lower third and the upper two-thirds of the said paper-writing were then interlaced and had never been separated.

206 On his cross-examination said Hagan further testified, when asked whether he could find among the signatures which were admitted to be genuine one in which the "J" was in all respects like the one to the signature in controversy, that he had not looked except while on the stand, but that he could not find it; that no man writes a letter twice exactly alike, of course; that the question called for something he could not find; that a man cannot write the "J" which begins his name twice exactly alike in every respect; that he can write twice alike in those respects which give it character, but, in witness' opinion, it was impossible to write exactly alike in all respects: that if witness should find two words exactly alike in different papers he would think that one was a tracing of the other or they were both from the same original; that in a book, of which witness was the author, he had shown that the so-called Morey letter was a forgery because the "Ja" in the signature "James A. Garfield" to that letter corresponded exactly with the "Ja" in the word "January" in the date of the letter; that those two "Ja's" being alike showed that they were from the same original; that in said book occurs the following paragraph:

"Where two signatures of the same person exactly coincide, when one is laid over the other in parallel arrangement, with a strong light behind them, this condition of their appearance is very positive evidence that one of them is traced from the other and is a forgery, as it is impossible for such a circumstance to occur in the writing of two signatures produced habitually.

"In the Sylvania Ann Howland case there were found to occur, as added to a will, three codicils, each of which had affixed thereto what purported to be the signature of the testator, and which three signatures, when examined as transparencies, were found to coincide in all respects as to form and general appearance. A calculation was made by Professor Pierce, a learned and well-known mathematician of his day, as to how often it was possible for such a circumstance to happen with habitually produced signatures. He gave it as his opinion from actual calculation it could only happen once in two trillion eight hundred and sisty-six billion times."

207 The witness said, on further cross-examination, that he agreed with Professor Pierce in this matter in a general sense, but could not follow him into billions and trillions; that in writing other words they would vary more from each other than the signature, because the writing of the signature is purely a mechanical act; that if he found in the body of a letter, for instance, two words alike of reasonable length—not short words like "to" or "the"—he would say they were traced from each other or one from the

other, and that the way to go to work to find that out would be to examine them with transparencies by the use of sunlight, and that the best way was to use the transparencies, and then to measure them with the compasses.

And thereupon, upon further cross-examination, the witness testified that, after comparing certain words in the will with the same words in the letters of Joseph Holt dated Feb. 7th, 1873, and Sept. 29th, 1873, which had been introduced in evidence by the caveatees, with the aid of a gelatine fac-simile of the will, in transparency, produced by the caveators, the witness testified that he was still of the opinion that the hand which wrote the letter admitted to be genuine also wrote the will, and that he found in the said admittedly genuine letters reproduction of the same words in fac-simile in a number of instances, not only in small words, but in long words, which he had never known to occur in the writing of anybody else—the almost exact reproduction of the same words in the same style, measurement, length, breadth, and depth, to an approximation as close as those in the letters of Feb. 7th and Sept. 29th, 1873.

208 Thereupon the caveatees recalled the witness P. TECUMSEH SHERMAN and offered the said witness in rebuttal of the testimony of the witness John B. Randolph as follows:

By Mr. DARLINGTON:

Q. I want to ask you about some alleged peculiarities in your father's signature.

Mr. WORTHINGTON: I object to any examination of any one in rebuttal about the signatures to that paper. That matter is foreclosed or else we were very much deceived in the situation.

Mr. DARLINGTON: On yesterday, as your honor will doubtless remember, a gentleman was called to testify upon the question of the genuineness of the signatures of Gen. Sherman and Gen. Grant to this paper, and he testified that they are not genuine because of alleged peculiarities in them. There is a kind of flourish, or what he has called a quirl, over the "T" in the signature "Sherman," and the witness testified that invariably those two lines met at a certain point, and that they were never distinct and separate.

The COURT: So far as he had observed.

Mr. DARLINGTON: He said he had seen thousands of them and never an instance where it happened. We want to rebut that and show this is not an unusual feature in his signature.

The COURT: How is that rebutting evidence?

Mr. DARLINGTON: When Mr. Sherman was on the stand he was not asked anything about peculiarities of that sort; he was simply asked whether that was his father's signature, and he said it
209 was. Of course, we could not have anticipated any such objection as this. When particular points of difference are pointed out it seems to me that we are very clearly entitled to show that those points were not peculiarities and are not indications of

forgery. They are points which could not have been anticipated and which were not gone into at all by our witnesses, but were introduced afterwards. I scarcely see what feature of rebutting testimony they lack.

Mr. WORTHINGTON: Your honor will remember that in making their case and before they closed it, while not called upon to do so, yet we stated that we understood that every piece of evidence which counsel on the other side expected to offer in support of handwriting in this paper, and that it was executed by Judge Holt, would, in our view, have to be put in in the first instance. We notified them twice about it, and your honor gave them notice, after they had closed what they thought was a *prima facie* case, that your honor agreed with us on that subject. They put upon the stand but one witness, as I remember it, to each of these signatures. This gentleman testified as to his mother's signature, Senator Sherman testified as to his brother's signature, and Mr. Grant testified as to his father's signature.

Mr. LEE: Senator Sherman also identified the signature of Mrs. Sherman.

Mr. WORTHINGTON: However that may be, the case was left mainly upon the question of the handwriting of the will. We have simply offered one witness as to each of these signatures. Now, if it is proposed to again go into this question as to the genuineness of those signatures your honor will perceive
210 that it reopens the whole case as to the whole will, because it is all claimed to have been originally one piece of paper. To say that when we call a witness to testify that in his opinion this is not the genuine signature of Gen. Sherman or of Gen. Grant, and they on cross-examination ask him to point out some differences and he does point out differences as to that signature and says that he has never seen a signature that contained some of the features which appear in this—to say that is rebuttal is quite remarkable. If they had brought somebody here to say that he was not telling the truth about it or was mistaken about it and had seen some signatures that had these peculiarities it might be worth talking about, but we would still say that was not rebuttal; but to bring in a witness here who says that he has seen other signatures besides those which the witness saw and has found certain peculiarities in them it seems to me clearly is not rebuttal testimony.

Mr. DARLINGTON: I want to show your honor just what we want.

The COURT: I think I understand what you want, Mr. Darlington.

Mr. DARLINGTON: The point I am making about it is that it was utterly impossible for anybody who did not possess omniscience to know that there would be a claim that the return line of that curve touched the lower line in the genuine signature of Gen. Sherman; that is a matter that could not have been anticipated. What I understand rebuttal evidence to be is evidence to meet those points which are introduced by way of denial of the case-in-chief which could not have been anticipated.

211 The COURT: You state the rule, I think, correctly; but the difficulty is in the application of the rule to the peculiar cir-

cumstances which you are attempting to define. The subject of the handwriting of these witnesses and its genuineness and the genuineness of these signatures was gone into, and the court required that the subject should be exhausted in the case-in-chief, because the very fact that was sought to be established at that time was the execution of this instrument. That execution was sought to be established in two ways—the witnesses being dead, by the proof of the genuineness of their signatures, and, secondly, by testimony indicating or tending to indicate the genuineness of the signature of the testator. Those witnesses who testified as to the genuineness of the signature were examined and cross-examined and gave their opinion as to each signature; that made the case-in-chief.

Now, the caveators in making out their case as a part of it have attempted to meet that evidence by witnesses, so far as the signatures of these witnesses are concerned, who claim to have some knowledge of the signature- of Gen. Sherman and his wife and the signature of Gen. Grant. Those witnesses, whatever their reasons may have been and upon whatever basis the judgment of genuineness or non-genuineness rested, gave eventually an opinion just as the witnesses for the caveatees have done. The witnesses who were examined in chief gave an opinion as to the genuineness of these signatures. Those who were examined in behalf of the caveators gave their opinion as to this question of genuineness or non-genuineness. Either upon the direct examination of these wit-
212 nesses or upon their cross-examination—I do not remember which, and it does not appear to me that it makes any difference—one or more of them gave the basis of the opinion formed, that opinion resting in part upon the familiarity with the signatures, derived from various sources. This particular witness to whom reference has been made said he acquired his familiarity by handling papers in the War Department and signatures to official papers. One of the reasons he gave why this signature, in his opinion, was not genuine was that he had never seen this peculiar feature. That was not a fact which he was testifying to, that the signature never was made in that way, but that, so far as his examination went, he had not seen it. The fact that he testified to, instead of being a fact in evidence, was the reason for his opinion. I do not think it would be competent to take the reasons given by the various witnesses for the opinion which they have formed and which they have expressed on the stand and attempt to controvert those reasons by what might be termed rebuttal evidence. It is not rebuttal evidence, in my judgment.

The objection will have to be sustained.

Mr. DARLINGTON: In order that there may be no difficulty in the record, I want to state that we propose to show by this witness that in the particular here mentioned, the return line of the curve or quirl, it was by no means an unusual feature in the signature of Gen. Sherman, and that it is frequently, if not habitually, found in his signature.

We reserve an exception to the ruling of the court.

I will ask another question of this witness, although, of course, the ruling covers it.

213 By Mr. DARLINGTON:

Q. In the "S" in the word "Sherman," in what purports to be your father's signature to that paper, you observe a loop at the bottom of the "S." I will ask you whether or not loops as large or as pronounced as that are usually found in your father's signature or otherwise.

Mr. WORTHINGTON: We object to that.
The COURT: The objection is sustained.

By Mr. DARLINGTON:

Q. I also ask you whether or not your father's signature was distinguished by the absence of tremor or whether there was a tremor in his signature.

Mr. WILSON: We object to that.
The COURT: The objection is sustained.

By Mr. DARLINGTON:

Q. I will also ask you, in the letter "S" in the signature "Sherman," where the upstroke crosses the downstroke, whether or not some enlargement of the lines there, or some thickness of them, is or is not a usual feature of your father's signature.

Mr. WORTHINGTON: We object to that.
Mr. DARLINGTON: On the same ground?
Mr. WORTHINGTON: On the same ground.
The COURT: That *it* is not rebuttal testimony and would not be competent, anyhow, in my judgment.
Mr. DARLINGTON: We reserve an exception to the ruling of the court on each of these questions.

21*st Exc.*

And to the said ruling of the court excluding the said testimony as not being competent in rebuttal the caveatees then and there duly excepted, and said exception was noted at
214 the time upon the minutes of the court.

Thereupon, in rebuttal of the witnesses produced on behalf of the caveators upon the question of the testator's style of composition, the caveatees offered as a witness on their behalf JOHN A. BINGHAM, who testified that he had been engaged in the practice of law for fifty years; had been in Congress sixteen years; was well acquainted with the testator from 1864 until the time of his death; was in official and intimate association with him during a protracted court-martial of the surgeon general of the Army of the United States, in which witness acted as judge advocate, and also while witness acted as special judge advocate in the trials growing out of the assassination of President Lincoln, in which trials the

testator acted as recorder; that he had papers submitted to him by the testator and in testator's handwriting for witness' consideration; that he had opportunities for learning the testator's attainments as a lawyer and otherwise; that witness frequently visited his house at his request and was very familiar with his writing; that he also had correspondence with the testator during witness' absence from the country as minister to Japan; and thereupon the following question was propounded to said witness:

Q. I wish you would examine the paper I now hand you, which purports to be the will of Judge Holt, and state whether, first, from your knowledge of his handwriting, the manner of composition, and general attainments, which we have gone into here, you are able to express an opinion as to whether that is in his handwriting, and, if so, whether it is or not, in your judgment.

215 Mr. WORTHINGTON: We object to that, first, so far as it relates to the question of handwriting, for reasons that I suppose are too obvious to require to be stated.

Mr. BUTTERWORTH: They are not so obvious to me; they may be to you.

Mr. WORTHINGTON: A number of witnesses were called here, and counsel were distinctly informed by the court that anything they had to offer on the question of handwriting they should offer when they opened their case. I now say that I object to so much of this question as refers in any way to an opinion based upon handwriting. Then I object to it further because it is not proper evidence in rebuttal, even when coupled with his style of expression, so to speak. That, however, is a separate and independent question.

Mr. BUTTERWORTH: I did not understand the court to decide that we were restricted in any event except as to the signatures in the will. The examinations were confined to the signatures in the will.

The COURT: I think you are mistaken about that. The handwriting of the body of the will was testified to by witnesses as being that of Judge Holt.

Mr. BUTTERWORTH: The witnesses called by the other side were examined not only concerning the chirography, but also as to the form of expression, the rhetoric, the forms of legal expression, and everything that goes to convey to the mind an impression about the genuineness of the document. I have coupled with my question as to chirography the other question which was propounded to the other witnesses, Major Winthrop and Col. Barr and Mrs. Briggs and Gen. King——

Mr. WORTHINGTON: Col. Barr was not allowed to answer it.

216 Mr. BUTTERWORTH: No; he was not allowed to answer as to the technical legal question, but as to an inspection of the paper, whether the composition, the mode of expression, the rhetoric, if you please, whether all those suggested to his mind, connected with the chirography, an opinion or whether he based his opinion upon all those. He said he did, and several of the witnesses, Mr.

King, Mrs. Briggs, and others, did the same thing. Hence I have put the question in that shape to Judge Bingham.

After argument:

The COURT: So far as an inquiry into handwriting is concerned, it seems to me to be very clear that it is not rebutting evidence. This controversy is one that is somewhat unusual. The execution of the will is controverted by one of the issues, and the caveatees necessarily assume the position of plaintiffs. In assuming the position of plaintiffs the caveatees necessarily assume the burden of proving the execution of this instrument. To prove the execution of the instrument, the three alleged witnesses being dead, proof of their handwriting, of their signatures, was offered, and then in addition to that proof of the handwriting of the testator, as to his signature, was offered and as to the body of the instrument itself, and that not by one witness as to each signature, but by a number of witnesses.

The caveatees, in the first instance, having offered evidence tending to prove the genuineness of the signatures of the alleged witnesses and having offered evidence tending to show the
217 genuineness of the alleged signature of the testator, then claimed to have made out a *prima facie* case, and the court ruled that having the burden of establishing the execution of this paper, having assumed it, the caveatees must exhaust that part of the case and offer such evidence as they saw fit as to the genuineness of the signatures and the body of the instrument, and that I understood was done. Now, the mere fact that some one or more of the witnesses examined in behalf of the caveators has based his or her opinion in part upon the composition of the instrument does not justify further inquiry into the handwriting of the instrument, based in part upon an opinion formed from the character or style of composition. After all, the opinion was an opinion of the genuineness of the handwriting, and that was all that was inquired into in behalf of the caveators. It was the genuineness of the handwriting, that opinion being based in part upon the peculiar characteristics, the chirography, and in part, as to some one or more of the witnesses, as to the composition.

This is clearly not rebuttal, so far as the inquiry relates to the handwriting, the body of the instrument, or the signatures of witnesses or of the testator. The objection is sustained.

Mr. DARLINGTON: I would like to call your honor's attention to one single witness, Col. Winthrop, who testified that his opinion was based upon the two together and he could not separate them; could not say how much was based on handwriting and how much on composition. Are we to have no opportunity of rebutting an opinion based upon the two things together?

* * * * * * *

218 The COURT: It seems to me that the question that was the subject of inquiry in behalf of the caveators was the genuineness of the handwriting. The fact that a witness based his opinion in part upon the composition does not justify the same inquiry

being put to a witness called in rebuttal. The subject of the handwriting of the witnesses of the testator and of the signatures and body of the instrument has been gone into in chief. I, at the outset, required the caveatees to exhaust that portion of their case.

The objection is sustained to that question.

Mr. BUTTERWORTH: We note an exception.

219 *22nd Exc.*

To the said ruling of the court in excluding the said question and not permitting the witness to answer the same the caveatees then and there duly excepted, and the said exception was noted at the time upon the minutes of the court.

Thereupon the said witness was further interrogated as follows:

Q. You may state, if you please, whether your familiarity with the handwriting of Judge Holt and his general qualifications as a lawyer, his style of composition, manner and mode of expression, use of legal phrases and terms, is such as to enable you to form an opinion as to whether the paper you hold in your hand, which I have referred to, is in the handwriting of Judge Holt.

Objected to. Objection sustained and exception noted.

Mr. BUTTERWORTH: We want to call to the court's attention what the answer of the witness would be. I do not want the court above to say he might have answered it the other way.

Mr. DARLINGTON: We expect to prove by the witness that he is familiar with the handwriting, the style of expression, the legal qualifications and habits as to legal and other phraseology of Mr. Holt, and that he has an opinion upon the subject presented in the preceding question, and that in his opinion this paper carries with it inherent evidences of its genuineness upon consideration of all those points, or that there is nothing in the handwriting or in the handwriting and composition together to indicate that he was not the author of it.

That is overruled, and we note an exception.

220 The COURT: There is nothing for me to rule on. You say that is what you expect to prove. There is no offer to prove.

Mr. DARLINGTON: We offer to prove that by this witness if he is allowed to answer these questions.

The COURT: That offer is objected to?

Mr. WORTHINGTON: Certainly.

The COURT: The objection is sustained.

Mr. WORTHINGTON: The ground of the objection is that it is not competent evidence in rebuttal.

The COURT: I want it understood that this ruling does not apply, and I do not understand that it is the offer to introduce evidence tending to show the knowledge of the witness of the characteristics and attainments of the late Gen. Holt, what those characteristics and attainments were, independently of the instrument itself.

23d Exc.

To which ruling of the court in excluding the said question and not permitting said witness to answer the same the caveatees, by their counsel, then and there duly excepted, and the said exception was noted at the time upon the minutes of the court.

Thereupon said witness further testified that he regarded the testator as a strong, sensible, careful, painstaking man, very faithful in the discharge of his duties; that witness never had any indication from the intercourse between them, from reading his papers, or from anything said in his conversation that he was a technical lawyer at all; there was no sign of any recourse to technical words in his papers at all; he dealt with facts and general principles.

221 Thereupon the caveatees offered as a witness on their behalf Major CHARLES B. THROCKMORTON, who testified that he first met Joseph Holt in 1858 at witness' father's house, when he was sixteen years old, and continued to know him ever afterward; that in 1859, when said Holt was Postmaster General, he appointed witness to a position under him; that when the war was threatened witness' father entered the Confederate army, but that witness, under the influence of Joseph Holt, entered the Union army, and was through the said influence appointed a second lieutenant; that said Holt corresponded with him throughout the war, encouraging and exhibiting an interest in him, and continued his correspondence after the war, their relations being of the most friendly character; that in 1863 witness married Miss Wickliffe, who was first cousin to said Holt's second wife, on which occasion said Holt endorsed witness most strongly to the Wickliffe family; that his first child, Josephine Holt Throckmorton, was named after Joseph Holt, who wrote, thanking witness, consented to act as godfather, sending a silver mug and a bottle of water which he had brought from the River Jordan for the christening; that while stationed near Washington from 1868 to 1872 he and his family were upon the most cordial and friendly relations with said Joseph Holt; that these relations were maintained through correspondence after 1872, when witness was on the Pacific coast and engaged in the Modoc campaign; that no difficulty ever took place between the said Holt and witness or the immediate family of the latter; that a misunderstanding did arise between the said Holt and witness' mother, who at the time of the trial was over eighty years of age and
222 feeble, both physically and in point of memory at times; that in the latter part of 1880 said Holt wrote witness that his said mother had informed him that witness' wife had said that Miss Lizzie Hynes had shown and ridiculed letters written to her by said Holt; whereupon both witness and his wife answered the said letter of Holt, and received from him in reply a letter in the words and figures following, which letter, dated in January, 1880, should have been January, 1881, having been received by witness in the latter year, while stationed at Fort Stevens, Oregon:

WASHINGTON *Jany* 12*th*, 1880.

MY DEAR MRS. MAJ. THROCKMORTON.

Nothing could induce me to refer to the repulsive matter of which you write, but the fact—sufficiently apparent from your lett-r of the 23d ult—that of what your mother heretofore communicated to me, but a small part has reached me, & that small part in such a shape as to make it impossible for you to comprehend it aright. The story, as given to me by your mother was not that

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letters, criticising them &c. but it was this—that years ago the Miss Hynes, cousin of Lizzie, told you that on a certain occasion Lizzie had read to them passages from one or more of my letters,
223 ridiculing them & calling me an "old fool" &c. because of certain terms of endearment they were alleged to contain. This was your mother's distinct statement as coming from yourself. I pronounced it false, stating that from my knowledge of Lizzie Hynes, she was incapable of such unworthy & ungrateful conduct, & further that no such words had ever been employed by me in any of my letters to her. I added that I would avail myself of the earliest opportunity

* * * * * * *

was brought to Lizzie's notice, she indignantly denied it; but within a few months, I have been able to make such an investigation, as to satisfy me beyond the possibility of doubt, that Lizzie never read or exhibited one of my letters to her cousin the Miss Hynes or made to them a disparaging or unkind remark in regard to me, but the contrary, I have now before me a letter from Miss Florence Hynes to this effect, & she adds that nothing but malignity could prompt such a statement.

* * * * * * *

I did denounce to your mother, as an outrage on my own sensibility, the circulation of such a calumny upon a lady to whom, as was well known, I held the relation of friend & protector, a relation constituted by her dying cousin who was my wife, more than thirty three years ago. I now realize that I should at once have made known to you this startling communication from your mother, & thus have afforded you an opportunity of denial or explanation, but the truth is, in view of the affectionate friendship I had borne
223½ you, I was so shocked that I could not trust myself to speak to you of it. The object of my last interview with your mother was simply to report to her the results of my investigations & to read to her some of the proofs which I hold, she did not claim that she had been in anything misunderstood in her statements nor could she have been.

I beg you will express my warmest thanks to the Major, for his very kind & most welcome letter. He has been my constant, true friend through many long & weary years. His friendship, always heartily reciprocated—has cheered & blessed me, & I am & shall

always be most grateful for it, as I am for your own words now before me.

Very sincerely yours

J. HOLT.

224 Said witness further testified that, although bitter towards Mrs. Throckmorton, Sr., after this incident, the said Holt never mentioned the matter to witness nor witness to him; that he continued to treat witness and his family with kindness, as before, and there was never any other difficulty that witness remembers; that this difference placed witness in a somewhat delicate position and, in consequence, he drew slightly away from the said Holt, seeing very little of him after 1885, but that they met occasionally and their relations were always pleasant.

On cross-examination said witness admitted having written and mailed to said Joseph Holt the following letter, found among the papers of said Holt after his death, and that the separation and misunderstanding mentioned in which letter was the difference between witness' mother and said Joseph Holt and the drawing apart between said Holt and witness which resulted therefrom:

225 "FT. SCHUYLER, N. Y., *Jany 2d*, 1891.

Hon. Joseph Holt,
Washington, D. C.

MY DEAR SIR.

After many years of separation, I again approach you for assistance. Will you give me a letter that I can lay before the Gen Court Martial, covering my entry into the army, such service as you may know, and any good words you may be willing to say for me.

You have been in the past the best friend I have ever had, and I have always loved and respected you as a friend and benefactor.

A terrible *misunderstanding* or *misrepresentation* has come between us, which I regret from the bottom of my heart.

I remain with the Greatest Respect,
Yours most sincerely

C. B. THROCKMORTON."

226 Said witness further testified that he had never had any difficulty, in the army or out of it, other than that out of which his court-martial grew; that with that exception he had never been arrested, reprimanded, censured, nor any charges of any kind made against him from his entrance in the army, in March, 1861, to his being placed upon the retired list, in 1894; that he saw the said Holt at the house of the latter in the early part of 1885 and spent quite a time with him; that he had no correspondence with him subsequently, but that the said Holt corresponded with witness' daughter; that the relations of the said Holt towards him were always pleasant when they met; that witness attended no reception at the White House between the first reception of President Hayes to the officers of the army and navy and the first reception

of President Cleveland; that he was not stationed in Washington and attended no reception during the administration of President Arthur; that his daughter accompanied him on the occasion of President Cleveland's reception, and that the incident testified to by the witness Mrs. Briggs—namely, the refusal of Joseph Holt to speak to witness and his turning his back upon him—did not in fact occur. Thereupon the said witness produced and they were admitted in evidence the following letters, all of which were conconceded to be in the handwriting of Joseph Holt:

227 & 228 WASHINGTON *Decr. 9th* 1876.

His Excellency
U. S. Grant,
President of the U. States,

SIR.

Having learned that in the contemplated reorganization of the signal corps, provision will probably be made for two officers with the rank of Major, I desire to unite with the other friends of Brvt. Major Charles B. Throckmorton 4th Artillery, in asking his appointment to one of these positions. He entered the army in March 1861 & though then but a youth he remained faithful to the flag, in despite of the remonstrances & importunities of his father, who sought to carry him with himself into the military service of the rebellion. From that time until the present I have been a close observer of his military career & believe that it
229 has been marked by ability, gallantry & an unflagging zeal under all the circumstances in which he has been placed. He served through the war & made for himself a most honorable record of duty performed. It may be mentioned that young as he was, he was placed in command of a battery at the first battle of Bull's Run & so conducted himself throughout that engagement, having saved his guns from capture by the enemy, as to gain the warm commendation of his commanding officer, as will be seen by reference to his report on file in the War Department. It is but due to him also to state that this service was rendered with a knowledge on his part that his father was then a rebel officer in the army confronting him & on which his battery was playing—a fact which gives to the service a character probably without a parallel in the history of the rebellion.

Major Throckmorton also served through the Modoc campaign, with distinguished honor & although the war with these fierce savages was not one of magnitude it involved service in the lava beds on the part of those engaged in it at once arduous, difficult & of extreme peril.

In view of this officer's record of service so patriotically & faithfully performed, & of his acknowledged qualifications for the duties of the position sought his appointment is respectfully but most earnestly recommended with full conviction on my part that he will do honor to the office should it be bestowed upon him.

Very respectfully
Your obt. servt,

J. HOLT.

230 WASHINGTON *Feby* 21*st* 1866.

MY DEAR COUSIN

The accompanying little watch was a gift from me to your cousin Margaret on the occasion of our visit to Geneva in the autumn of 1850. She wore it through all our wanderings & to the close of her life when she bequeathed it to my aunt Mary Ann Stephen to whom she was warmly attached. My dear old aunt in a letter to me accepting the offering said "When you hear that I am dead come & get the watch & give it to some one of Maggie's relations." She herself died a few months since & in presenting the watch to you I comply alike with the letter & spirit of her injunction & beg you to be assured that I have great pleasure in doing so. I trust that your young life may be spared to wear it through many long & sunny years, & I am sure that you will do so in some sympathy with the fond memories which for me cluster about it.

With kind regards to your excellent husband, I am

Sincerely yours

J. HOLT.

Mrs. Maj. Throckmorton
Detroit.

231 WASHINGTON *February 7th,* 1873.

MY DEAR COUSIN:

Your very sad letter of the 21st ult. has occasioned me much sorrow; not because I share the fears for Charlie's safety which are oppressing you, but because the picture of your grief & loneliness presented by you, which is continually before me, affect me more than I could express to you—Whatever may be the hardship of the military movement in which your dear husband is engaged,

231½ I am sure in the anxieties of your loving heart you greatly overestimate its peril. I am certain Charlie will return to you from it, not only safe but with increased honor in his profession and increased claims on the confidence and & devotion of his friends—and hereafter he will only be the dearer to you & you will be but the prouder of him for his having nobly done his duty.

You doubtless are already aware of the determination of the Government to engage in no further hostilities with the Indians, until all efforts at conciliation & peace have failed. That these efforts, made as they will be, in good faith & with a fixed purpose to do justice to the Indians, will be successful, I feel perfectly satisfied. You must be tranquil as you can and hopeful and have an abiding faith, that Charlie's life so precious to us all, and which so well deserves protection will receive it.

Your mother is very much worried with her apprehensions—Indeed she fairly took to her bed a few days ago, but is calmer and better now since she has learned the peaceful course which the govt. will endeavor to pursue.

Give my love to the dear little children and tell them that I think of them and love them always and am glad they are all escaping

the horrible ice and snow with which we have been frozen up this winter.

Wishing with all my heart, my dear cousin, that you may be speedily delivered from all the fears and sorrows now weighing upon your loving and true life, I remain as ever your affectionate cousin

J. HOLT.

232 WASHINGTON *September 29th*, 1873.

MY DEAR COUSIN.

I was very sorry to learn from your mother that my last letter—which was in reply to one from yourself—failed to reach you. It was plainly directed & deposited in the office with
233 my own hand, so that I cannot explain its loss. I am sure however you did not require the assurance which it bore to satisfy you of my continued, and affectionate remembrance of yourself and of the loved one- around you. Taking your mother yourself, & the Major together, you must as a family be regarded as, marvels of correspondence, which I fear, little prepares you for tolerating the shortcomings of others in that line—so I have not entitled myself to letters from either of you for a good while, I have been so fortunate as to hear of you & to be privileged to look into your precious little home circle, through your letters to your mother—& they have been to me a continual source of the greatest gratification. If I could only hear the bright joy of those dear little children my ears would have a peace which the saints cannot provide for them here.

Of course your mother has written to you how beautifully she has fitted up her house. It seems to afford her the sweetest satisfaction, but I think her chief happiness now consists in the contemplation of a visit to California which I am certain she will make this spring or summer. I believe a few -eeks passed among the love & endearment of your household—which seem to be her heart's continual home—would renew her life and lengthen both its years and its joys.

I was delighted to hear that the Major is reading law & think he cannot better employ his leisure moments—even if he should never practice it—which I am sure he could do successfully—the knowledge of legal principles thus acquired would hereafter be of the greatest advantage to him in his present profession. Your
233½ mother said he was reading Blackstone, which is a standard work of the highest character, & generally is the first study. After that I should think Kent's Commentaries would be the best work for him, but any lawyer in San Francisco, whose acquaintance he has made, can give him proper advice as to his course of reading. You must give my love to Josephine & Wickliffe and accept it abundantly for yourself & the Major, and believe me as ever

Your affectionate cousin

J. HOLT.

234 Said witness also offered in evidence, among others, the following letters, dated Washington, Oct. 4th, 1861: * * *

In view of the adverse influences which have assailed you, your loyalty, amid the demoralization & treason of the times is the brightest jewel of your professional life, & one which you cannot guard too carefully. With your father in the rebel army, & most of your relations pressing in the same direction, I feared that in the impulsiveness of your youth, you might not sufficiently reflect how sad an influence upon your professional reputation for fidelity to the flag might be excited by a word lightly and hastily or even jestingly spoken. I have no fears about the loyalty of your heart myself, but I am most anxious that even the most skeptical and distrustful shall have no occasion to doubt it.

I was gratified beyond measure at the mention of your gallant bearing on the field of Bull Run, which is found in the report of your commanding officer. You have only realized my anticipations, but I was delighted that you should so early have had an opportunity of vindicating the confidence reposed in you by your country.

235 WASHINGTON, *July* 16, 1863.

* * * * * * *

I have so much pride & pleasure that you still maintain your stand under the old flag, which, in the years to come, will give you & all who have defended it, a protection & a happiness which could be found no other where. All that I have heard of you has fulfilled my early expectations & has been to me a source of the highest gratification. As you have begun so I am sure, you will continue to the end—earnest, outspoken and heroic in your loyalty, & in your love of a country and government, every throb of life has teemed with blessings & honors for the American people.

236 WASHINGTON *August 5th* 1863.

Your record is without a stain, & my conviction is complete that it will grow brighter & brighter with the years that are to come.

I am glad you met Miss Hynes during your visit to Bardstown. She is in every way a noble spirited woman, but especially so in her love of country—loyalty is a sentiment which with her has the depth and fervor of religion itself.

Sincerely your friend,

J. HOLT.

236½ WASHINGTON *Sept 12th* 1866.

MY DEAR MAJOR.

I am in receipt of your kind note of the 8th inst. advising me of the birth of a little daughter in your home, & that you have honored me so far as to give her my name. I accept this as a great compliment from cousin Fannie & yourself, & as a recognition of one friendly relations which has deeply touched my heart & for which I am most grateful I congratulate you both on this bright accession to your household jewels, & trust that the young stranger,

growing in beauty & charm with her years, may in the future make you both glad even though all things else should make you sorrowful.

237 Thereupon the caveatee Miss JOSEPHINE HOLT THROCKMORTON gave testimony tending to prove that she was born in 1866, at Detroit; that from 1868 to 1872 she was with her father in forts near the city of Washington, where Joseph Holt used to visit them and where she first recollects him; that he saw her quite often and taught her to call him "Bon Pere;" that she frequently visited and stayed at his house; that he made her frequent presents of rings, dolls, and other toys; that she used to write him penciled letters, which he preserved and showed to her at his house as late as the fall of 1886; that the letters from Joseph Holt introduced by the caveatees were among a number of letters kept by her mother until 1890 in a packing box, and that in 1890, needing that packing box, her mother gave them to her; that she nailed them up in a smaller box, and that they remained in that box and in her possession, without being opened, until after the discovery of the will, when she opened the box to see what letters of her Bon Pere were among them, and that she sent them by her brother to her counsel in Washington; that he treated her with the greatest affection, made her many presents, including clothing and gifts of every description; that on her fifteenth birthday he gave her a watch and chain; that she was in school at Washington in 1881 and 1882, and then saw him constantly at his house and elsewhere; that there was not the slightest change in his bearing towards her, and that he gave her, during this period, a set of Dickens' works; that in 1882 or 1883 she joined her father at Fort Preble, in Maine, then at Newport, during which period she corresponded with said Joseph Holt; that she was in Washington from 1883 to 1885, visiting him twice a week or oftener; that he always greeted her with a kiss whether at his house or on the street, and treated her as if she were his own child; that from 1885 to 1888, her father being stationed at New Orleans, she spent the springs and winters there, but visited Washington and Northern points during the summers, meeting the said Holt and taking walks with him frequently on such occasions, and corresponding with him while at New
238 Orleans; that he gave her a set of mosaics in 1885, and a diamond ring on her birthday in 1887; that on all occasions, down to the last time she ever saw him, his manner and bearing was as it had been all her life; that on her return from California in 1882 she was in her 16th year, almost as large as now, was in Washington only from December to April, and that she and her brother were never on any occasion told that said Holt would not see her, nor did they pick apples, peaches, or other fruits in the yard, as testified to by the witness Johnson; that she was in Washington from January until April, 1891, during which period she saw said Holt, usually in his bed-room, his health then being very bad, and that he treated her with the same affection as he had done from her earliest recollection; that two of her visits during this

period were made about dark, and she was accompanied for that reason by the witness Anna Tulley; that on one of these visits he gave her a gold scent-bottle to replace one she had lost, which bottle she still possesses; that during the trouble growing out of her father's court-martial in the winter of 1892 she saw said Holt on two occasions, on one of which he advised her to get a letter of introduction to Vice-President Morton from Mr. C. G. Hinton, as a result of which advice she had a kindly interview with Mr. Morton; that on another occasion the servant Martha Scott told her said Holt was ill and could not see her, whereupon witness asked Ellen Foster, the cook, to tell said Holt she was there, who immediately came down, inviting her up to the room of said Holt, whom she found indisposed and lying in bed; that he then told her he did not see how it was possible that, with her father's record before them, a court-martial could have reached an adverse finding, and,
239 in reply to witness' apprehensions as to the future, in case the result of the said court-martial should be sustained, he said to her she should have no fear for the future; that he was an old man, then lying on the brink of his grave, but that he had provided for her, and that she would be perfectly independent; this was the last time she ever saw him, and that he never spoke to her at any time otherwise than kindly and with affection of her father and mother; that he told her at this last interview that her father's trouble was as much a distress to him as if he had been his own son.

Said witness further testified that in the summer of 1895 she had passed through Washington without stopping, going to Culpeper, Va., to visit relatives there; that she returned, passing through Washington, she thinks, on the 24th day of August, on which latter occasion she was in the city but an hour, awaiting her connecting train to New York; that on this latter occasion she met no one whom she knew in Washington and did not leave the station; that she reached Washington about two o'clock p. m. or a few minutes after, and the next New York train left, she thought, a few minutes after three o'clock p. m., and that after the death of the said Holt she first spoke to Mr. Justice Brown, of the Supreme Court of the United States, and subsequently wrote to Mr. Luke Devlin, whom she had known as a child, thinking from the conversations of the said Joseph Holt with her in 1892 that there must be a will.

Thereupon CHARLES WICKLIFFE THROCKMORTON, a witness on behalf of the caveatees, testified that he was a son of Major Charles B. Throckmorton and Mrs. Fannie W. Throckmorton; that he made his grandmother a visit in Washington in June, 1895, and
240 was not in said city again until August 30, 1895; that he first saw the will, on the last-named date, in the office of the register of wills, and that he had no knowledge who sent the will to the register's office.

Thereupon caveatees offered in evidence a letter without date or signature, but which was admitted to be in the handwriting of

Joseph Holt and which the testimony on behalf of the caveatees tended to show was written to Mrs. Throckmorton, Sr., and was enclosed with a letter from her to either her son, Maj. Charles B. Throckmorton, or Mrs. Fannie W. Throckmorton, under date of February 6, 1873, as follows:

EXHIBIT C. W. T. No. 1.

MY DEAR FRIEND

Lowrey did not call yesterday because of the inclemency of the weather. I hope he did not disappoint you. He went over in the forenoon of today, to offer you his services but you had already gone out.

I sent an invitation to Gen'l & Mrs Sherman today but fear that one or both will decline unhappily, it is the evening of Gen. Sherman's weekly reception, but I could not avoid this, because on no other evening of the week were Gen & Mrs Grant disengaged. It will spoil my arrangements completely, if the Sherman's decline. As the weather will prevent you from seeing Mrs. S., could you not address her a note this *evening* urging her to meet you at the dinner? If you can I will send it by Lowrey at once. Tomorrow may be too late.

I have already received the acceptance of Gen & Mrs Grant. You might mention to Mrs S—that they will be there—but you know best what to say.

Sincerely your friend.

Thereupon the caveatees rested.

241 Thereupon in surrebuttal the caveators introduced testimony tending to prove that said Joseph Holt kept little books in which he entered all his expenditures of every kind; that the last date on which the expense of a visit to Niagara occurred was in October, 1879, in connection with the initials E. H., apparently referring to Miss Hynes; that said book contains entries referring to visits to Holt's Bottom, one of said visits occurring in June, 1873, and others occurring annually or semi-annually from 1876 to 1888; said book contained entries of payments made to "E. H." from 1872 to 1888, in amounts varying from $380 to $750 for the years between 1873 to 1883, and from $25 to $250 for the years between 1884 to 1888; that the said book contains no entries of the names or initials of any member of the Throckmorton family; that the entries in said book relating to "E. H." for the year 1889 aggregated $85, for the year 1890, $105, and for the year 1891, $230; that there were entries in one of said books for every day in the month of February, 1873, and that the only entries during that month relating to the expenses of a dinner party were the following:

1873.

Feb'y 22. To Thomas Washington for himself & 3 others waiting on dinner yesterday... .... $12 00

Counsel for the caveators also put in evidence the following receipted bill, which it was admitted by counsel for the caveatees was found among the papers of said Joseph Holt after his death:

"WASHINGTON, D. C., *Feb.* —, 1873.

Hon. Judge Holt to John A. Gray, Dr.

Feb. 21st. Dinner for 17 person..... ..... $110 50

Rec'd payment,

JOHN A. GRAY."

242 Thereupon the said MARTHA SCOTT in surrebuttal was further interrogated on behalf of the caveators as follows:

Q. Did you hear the testimony of the girl whose name was, I think, Annie Tulley?

A. Yes, sir.

Q. What have you to say about that visit——

Mr. DARLINGTON: I object to that. The witness was interrogated about that and denied ever having seen the girl.

Mr. WORTHINGTON: She was asked about the girl having been there, but she was not confronted with the girl.

Mr. DARLINGTON: Her name was given.

243 Mr. WORTHINGTON: Her name was given, but the individual was not here at that time and she could not see her. I think I have the right, now that she has been here on the stand, to ask her whether that girl ever came to that house.

The COURT: I think you have the right to ask the question since the girl has been produced. If she had been in court at the time the question was put and had seen the person that would have answered it. She has said that she did not see Miss Throckmorton there with any other person.

Mr. DARLINGTON: We thought that the rule would allow the introduction of testimony to rebut particular incidents. For example, after proving the signature of Gen. Sherman they introduced testimony tending to prove particular points of difference in that signature. We thought we had the right to introduce rebuttal proof on that point, but it was ruled that we had not.

The COURT: That was a very different matter. It is very well known that you cannot introduce collateral writings for the purpose of showing the peculiarities in handwriting.

Mr. DARLINGTON: I am referring now to the testimony of Mr. Sherman, that the peculiarity indicated in the testimony of their witnesses was not a peculiarity in his father's signature, and that his father did sign his signature where the two lines of the quirl did not coincide. It seems to me that is a much stronger case of rebuttal testimony than this could be; but, however, we content ourselves with reserving an exception if your honor thinks that is proper.

The COURT: The girl was called for two purposes: First, to
244 corroborate Miss Throckmorton by saying that she was at the house on a certain occasion with her, and also for the purpose of indicating that she had been there. This witness had already testified that she was there on one occasion. This is simply for the purpose of contradicting her, and I think the question may be put whether, having seen the witness upon the stand, this witness can now state whether she ever saw her at that house.

Mr. DARLINGTON: We will reserve an exception.

By Mr. WORTHINGTON:

Q. You saw the girl, Annie Tulley, upon the stand?

A. Yes, sir.

Q. When did you see her before she was on the stand?

A. That is the first time I ever seen her.

Q. Can you tell us whether or not she came to the house at any time, when you met her there?

Mr. DARLINGTON: I object.

A. No, sir; I never seen her.

Mr. DARLINGTON: I take an exception.

24" *Exc.*

To the admission of which evidence the caveatees, by their counsel, objected; but the court overruled the said objection and admitted the said testimony; to which ruling and admission the caveatees then and there duly excepted, and the said exception was noted at the time upon the minutes of the court.

Said caveators further gave testimony tending to show that the hall in testator's house, in which the witness Annie Tulley said she sat while waiting for Miss Throckmorton, was six feet by eight feet, and that no chair was kept there; that a chair could be put there, but it would be uncomfortable to sit in the hall in a dark place; that the only furniture in the hall was a hall-rack for people to hang their hats on.

244½ The caveators further introduced as a witness on their behalf JAMES E. BELL, superintendent of the city post-office delivery of Washington, D. C., who gave testimony tending to show that the envelope in which the will was forwarded to the register of wills, and which envelope was stamped by the Post-office Department "Washington, D. C., May 24, 6 p. m., 1895," "L," was a local letter, the said "L" being what is called by the post-office the "Local" stamp; that had the said envelope been delivered to the city post-office it would have been stamped with a number indicating the man who stamped it, but that all local matter brought in from the letter-boxes by the collectors bears the imprint "L," which appears on the envelope; that said envelope was collected from the northwest section of the city, which section is bounded on the east

by North Capitol street, on the south by the Mall, on the west by Georgetown, and that the envelope in question was deposited somewhere in said section between the hours of three and four p. m.; possibly a little earlier or little later.

245 Thereupon, the foregoing being all the testimony in the cause, the caveators prayed the court to instruct the jury as follows:

4. As to the question of revocation the jury have the right to consider such burning and mutilation of the paper-writing in controversy as they may be satisfied from the evidence existed when it reached the office of the register of wills, together with all the evidence in the case tending to show any change occurring after February 7th, 1873, in the relations of the testator either to the persons named as beneficiaries in the alleged will or any of them or to those who would be entitled to his estate under the law if he had died intestate, and if the jury are satisfied from all this evidence taken together that such burning and mutilation was done by Joseph Holt or by his directions with the intention of revoking the same, then the jury are instructed that they should answer the fourth issue, "Yes."

25" *Exc.*

To which prayer for instructions the caveatees, by their counsel, then and there objected; but the court overruled their said objection and granted the said instruction to the jury; to the overruling of which objection and to the granting of said prayer for instruction the caveatees then and there duly excepted, and the said exception was noted at the time upon the minutes of the court.

Thereupon the caveators prayed the court to further instruct the jury as follows:

7. If the jury find that said paper-writing was both signed and sealed by said Joseph Holt, and that he afterwards removed
246 or caused to be removed such seal with the intention of revoking said will, then the jury are instructed to answer the fourth issue in the affirmative.

26" *Exc.*

To which prayer for instructions the caveatees, by their counsel, then and there objected; but the court overruled their said objection and granted the said instruction to the jury; to the overruling of which objection and to the granting of said prayer for instruction the caveatees then and there duly excepted, and the said exception was noted at the time upon the minutes of the court.

Thereupon the caveators prayed the court to further instruct the jury as follows:

8. The jury are instructed to disregard any opinion as to whether Joseph Holt wrote the paper in controversy that may have been expressed by any of the witnesses for the caveators in this case so

far as such opinion was based upon anything but the handwriting of the paper. In so far as any such opinion may have been based, in whole or in part, upon the composition of the paper or the expressions contained in it or the legal or literary attainments of said Joseph Holt they are withdrawn from the consideration of the jury, but all other evidence which has been admitted in this case bearing upon the legal attainments and literary style of said Joseph Holt remains as competent evidence for the consideration of the jury, along with the other evidence in the case bearing upon the question of the genuineness of said paper.

27" *Exc.*

To which prayer for instructions the caveatees, by their counsel, then and there objected; but the court overruled their said objection and granted the said instruction to the jury; to the over-
247 ruling of which objection and to the granting of said prayer for instruction the caveatees then and there duly excepted, and the said exception was noted at the time upon the minutes of the court.

Thereupon the caveators prayed the court to further instruct the jury as follows:

10. The jury are instructed that the question for their determination as to the first issue in this case is whether they are satisfied by a fair preponderance of the evidence that Joseph Holt executed the paper in controversy, and not whether, if he did not execute it, by whom it was written; and if the jury are not so satisfied as to the fact of the execution of said paper by said Joseph Holt they should not be deterred from rendering a verdict accordingly by any effect such verdict may be supposed to have upon any other person. The question whether any person is criminally liable in connection with the preparation or mailing of said paper is not involved in this proceeding.

28" *Exc.*

To which prayer for instructions the caveatees, by their counsel, then and there objected; but the court overruled their said objection and granted the said instruction to the jury; to the overruling of which objection and to the granting of said prayer for instruction the caveatees then and there duly excepted, and the said exception was noted at the time upon the minutes of the court.

248 Thereupon the caveatees prayed the court to instruct the jury as follows:

1. The jury are instructed that their answer to the second issue should be no.

29" exc.

2. The jury are instructed that their answer to the third issue should be no.

Which instructions the court granted.

30" exc.

Thereupon the caveatees prayed the court to further instruct the jury as follows:

3. The evidence in this case is insufficient to justify a finding that the paper-writing dated the seventh day of February, A. D. 1873, if the jury shall find that the same was executed by Joseph Holt as his last will and testament, has been revoked by him, and the jury are instructed that their answer to the fourth issue should be no.

31*st Exc.*

But the court refused so to instruct the jury; to which refusal to grant the said instruction the caveatees, by their counsel, then and there duly excepted; which exception was noted at the time upon the minutes of the court.

249 Thereupon the caveatees prayed the court to further instruct the jury as follows:

5. The jury are instructed that there is no sufficient evidence in this case to justify them in finding that the burning, tearing, cutting, or other mutilation of the paper-writing dated February 7th, 1873, was done by Joseph Holt or by his direction.

32*" Exc.*

But the court refused so to instruct the jury; to which refusal to grant the said instruction the caveatees, by their counsel, duly excepted, and the said exception was noted at the time upon the minutes of the court.

Thereupon the caveatees prayed the court to further instruct the jury as follows:

6. The jury are instructed that there is no sufficient evidence in this case to justify them in finding that the burning, tearing, cutting, or other mutilation of the paper-writing dated February 7th, 1873, was done by Joseph Holt or by his direction with intent to revoke said instrument.

33*" Exc.*

But the court refused so to instruct the jury; to which refusal to grant the said instruction the caveatees, by their counsel, then and there duly excepted; which exception was noted at the time upon the minutes of the court.

Thereupon the caveatees prayed the court to further instruct the jury as follows:

12. The jury are instructed that they cannot consider alleged oral declarations of Joseph Holt to the effect that he had made a will creating Washington Holt his executor, or alleged declarations to the effect that Joseph Holt had made a will in Washington Holt's favor as showing or tending to show revocation of any will

250 which the jury may conclude from the testimony was duly executed by the said Joseph Holt prior to such declarations.

34″ *Exc.*

But the court refused so to instruct the jury; to which refusal to grant the said instruction the caveatees, by their counsel, then and there duly excepted, and the said exception was noted at the time upon the minutes of the court.

Thereupon the caveatees prayed the court to further instruct the jury as follows:

13. The jury are instructed that they cannot consider any letters or writings offered in evidence, not themselves testamentary in character or not being in effect a last will and testament, for the purpose of showing or tending to show revocation of any will which the jury may conclude was duly executed by the said Joseph Holt prior to the date of such letters and writing.

35″ *Exc.*

But the court refused so to instruct the jury; to which refusal to grant the said instruction the caveatees, by their counsel, then and there duly excepted, and the said exception was noted at the time upon the minutes of the court.

Thereupon the court further instructed the jury, at the instance of the caveators and without objection on the part of the caveatees, as follows:

3. The jury are instructed that as to the first issue in this case the burden of proof is upon the proponents of the alleged will, and unless the jury are satisfied by a fair preponderance of the evidence that the paper-writing in dispute, dated February 7th, 1873,
251 and purporting to be the last will and testament of Joseph Holt, was executed by said Joseph Holt as and for his last will and testament, they will answer the first issue in the negative.

9. The jury are instructed that no statement which may have been made by George Johnson to the witness Truesdell as to declarations made by Joseph Holt to said Johnson can be considered by the jury for any purpose except that of affecting the credibility of said Johnson.

Thereupon the court further instructed the jury, at the instance of the caveatees, as follows:

4. The jury are instructed that they are not at liberty to find that the paper-writing dated the seventh day of February, 1873, if executed by Joseph Holt as his last will and testament was revoked by him merely from the evidence which said paper-writing exhibits of having been burned, torn, cut, or otherwise mutilated. Before they can find such revocation from the fact of such burning, tearing, cutting, or mutilation they must find from the evidence, first, that such burning, tearing, cutting, or mutilation was done by the said Joseph Holt himself or by his direction; and, secondly, that such burning, tearing, cutting, or mutilation was done by him or in his presence and by his direction or consent for the purpose or

with the intent upon his part to revoke the said instrument; and the burden of proof upon each of these propositions is upon the caveators, who must satisfy the jury by a fair preponderance of proof both that such burning, tearing, cutting, or mutilation was done by Joseph Holt or by his direction, and that the same was done with the purpose and intent of revoking said instrument.

252 7. If the caveators have failed to satisfy the jury by a fair preponderance of proof that the burning, tearing, cutting, or other mutilation of the paper-writing dated February 7th, 1873, was done by Joseph Holt or in his presence and by his direction and with the intent to revoke said instrument, then the burden of proof is upon them in this case, under the fourth issue, to satisfy the jury by a fair preponderance of proof that Joseph Holt revoked said instrument by a later will.

And to entitle themselves in this case to a finding that said paper-writing was wholly revoked by a later will, they must satisfy the jury by clear and satisfactory proof that Joseph Holt did execute a later will; that said later will was inconsistent with the paper-writing of February 7th, 1873, and that such later will was either in existence at the time of the death of Joseph Holt or was destroyed accidentally or fraudulently in his lifetime.

8. If the jury shall believe from the evidence that there was such a later will of Judge Holt, duly executed, and that it was either in existence at the time of his death or was destroyed accidentally or fraudulently in his lifetime, still, unless such later will contained an express revoking clause, of which there is no evidence in this case, it will not justify a finding that the paper-writing of February 7th, 1873, was thereby revoked, except to the extent that the contents of such later will, if there was one, are clearly proved and are shown to be inconsistent with the earlier instrument. Thus if they should believe from the evidence that there was such a later existing but lost will, and that it differed from the paper-writing

253 of February 7th, 1873, in the disposition of the testator's property, but in what particulars or to what extent it so differed they should be unable from the evidence to determine, this will be insufficient to justify a finding that the said paper-writing of February 7th, 1873, has been revoked.

9. If, however, the jury should believe from the evidence that there was such a later existing but lost will or will accidentally or fraudulently destroyed in the lifetime of the testator, and that any of its provisions have been clearly proven, which provisions are inconsistent with those of the paper-writing of February 7th, 1873, in part only, as by the gift of any specific property to a person not named in said earlier paper-writing or by the appointment of a different executor, this would be a revocation *pro tanto*, as it is called—that is, a revocation to the extent of such clearly proven and inconsistent provisions only, and their answer to the fourth issue should be so framed accordingly.

10. If the jury shall believe from the evidence that Joseph Holt did execute the paper-writing dated February 7th, 1873, as his last

will and testament, and that he afterwards executed a later will, inconsistent with it, which could not be found at the time of his death, the legal presumption is that he himself destroyed such later will, and that he thereby revived the earlier one, unless there was in such later will a clause of express revocation, of which there is no evidence in this case, or unless the jury shall believe from the evidence that the burning, tearing, cutting, or other mutilation of the earlier will was done by the testator in his presence or by his direction and with the intent and purpose to revoke it. This presumption
254 that the testator himself destroyed such later will, if there was one, is not conclusive, but it places the burden of proof upon the caveators to satisfy the jury by a fair preponderance of proof that such later will was in existence at the time of the testator's death or that it was in his lifetime destroyed by fraud or accident.

11. The jury are instructed that the testimony which has been admitted touching the business transactions and differences between Joseph Holt and the husband of Mrs. Ray is admitted for the purpose solely of tending to prove the intent or purpose with which the paper-writing of February 7th, 1873, was burned, torn, cut, or otherwise mutilated—*i. e.*, whether with the intent or purpose to revoke said paper-writing, in case the jury shall find from the evidence that such burning, tearing, cutting, and other mutilation was done by the testator or in his presence and by his direction. Unless the jury shall find from the evidence that the said burning, tearing, cutting, or other mutilation was in fact done by the said Joseph Holt or by his direction, the testimony in reference to the said Ray transactions and differences is not competent upon any question in this case and should be wholly disregarded.

And thereupon the court of its own motion further instructed the jury as follows:

255 WASHINGTON, D. C.,
THURSDAY, *June 25th*, 1896—3.15 o'clock p. m.

Charge to the Jury.

By Mr. Justice BRADLEY:

GENTLEMEN OF THE JURY: I have no doubt it is with a sigh of relief that you reach this stage of this case. You have been kept from your business and from your usual occupations not only during the month of your service which precedes the present month of June, but beyond the ordinary time which the law imposes upon a citizen as the length of service upon a jury in this District, from the first of June down to the present day.

I have no doubt the feeling of relief is not confined to yourselves, but that it is common to both counsel and litigants, and I can vouch for it as being surely enjoyed by the court.

It is a source of sincere congratulation, I think, that during this long trial no one of you has been sufficiently indisposed by sickness to keep him from the court-room, and that although indisposition has affected some of the counsel, and the court as well, that

indisposition has not been so extensive as to absolutely prevent the continuance of the trial, so that we have been subjected to no delays. The fact that the case has taken so long is not due to any matter over which we have had control, unless it be said that the court could have abbreviated the evidence, but is due to the
256 fact that a case of this nature is largely made up of circumstances which it seemed not only proper that the court should admit in evidence, but absolutely necessary and essential to the interests of justice. These circumstances have been so numerous that it has necessarily taken much time to lay them before you.

I do not apprehend that your attendance upon this trial, when it is over, will be regarded by you as an unmixed evil, although you may have been subjected to a great deal of inconvenience in your business, but that you will rather esteem it to be a privilege on your part to have sat as triers of the facts in a case that is so remarkable in all of its features as the case on trial and as well in a case that has been distinguished by such remarkable ability on the part of counsel who have represented both sides of this controversy.

I am sure that it has never before been your pleasure to sit and listen to a case that has been so admirably tried on both sides, and I do not remember a case that has been so striking in that feature in my own brief experience on the bench.

There has not been very much for the court to do, for counsel have been so amiable and accommodating to each other that many features of this case are features which the law books would not recognize. Evidence has been admitted by consent of counsel which the court would have been obliged to exclude if objection had been made, so that the duty of the court has not only been light, because of the few questions of law that have been raised, but it has been rendered pleasant and its onerousness has been alleviated very largely by the amiability of counsel, for in the
257 course of this whole trial there has not been an unpleasant incident, and although the trial has necessarily aroused all the earnestness of which counsel have been capable on no occasion has that earnestness passed to the degree of offensiveness or disagreeable remark or manner.

This, owing to the fact that lawyers are blessed (or cursed) with the same human nature that ordinary mortals are, is a rather unusual circumstance.

So that I think it is an occasion for sincere congratulation to counsel on both sides that we have passed through these many days of trial with unruffled equanimity; that the case has been tried with such distinguished ability, and that their clients, I am sure, no matter what the outcome may be, cannot say that it was due to the lack of interest, earnestness, or ability of their counsel.

You have been so well advised during the progress of this case as to the character of the evidence, the office which is sought to be accomplished by it, the particular relation that each item of evidence has borne to the questions that you are to try, and as well thoroughly advised by the arguments of counsel as to the bearing of the facts upon the issues and the law itself applicable to the case

embraces so few principles, that it is absolutely unnecessary for the court to do more than advert to the issues themselves and to the principles that affect them and to make a few comments upon the prayers that have been offered and granted by the court to
258 both sides, so that, at the outset, I will advise you that you need not expect that the court will occupy many minutes before the case is finally committed to your hands and the issues are entirely left with you.

There are four issues that have been sent up by the orphans' court to this court for trial, and to each of these issues you must return an answer. That answer will be "Yes" or "No," save with respect to the fourth issue, as to which, upon some contingency of the evidence, to which the court will advert in reading an instruction granted to the caveatees, the answer may be, if the evidence justifies it, some other answer than a simple affirmative or negative.

The first issue is this:

"1. Was the paper-writing bearing date the 7th day of February, A. D. 1873, which was filed in this court on the 26th day of August, A. D. 1895, executed by the said Joseph Holt as his last will and testament?"

That is to say, was the paper which is in controversy here, which you have all seen during the progress of the trial, executed by Joseph Holt, the testator, as his last will and testament?

"2. Was the execution of said paper-writing procured by fraud exercised and practiced upon said Joseph Holt by any person or persons?

"3. Was the execution of said paper-writing procured by the undue influence of any person or persons?

"4. If the said paper-writing was executed by the said Joseph Holt as his last will and testament, has the same been revoked by the testator?"

Your deliberations upon these issues will be confined absolutely to the first and fourth, for those are the only issues that have been on trial. The second and third issues relate to the questions
259 of fraud and undue influence exercised and practiced upon the testator by any person or persons, and the second and third issues you will necessarily answer "No," for there is no evidence which would justify any other conclusion. The court directs you that you return that answer to these two issues.

The first issue is this question. Was this paper-writing of February 7th, 1873, which has been exhibited to you and which is the subject of controversy here, executed by Judge Holt, the testator? This, you see, raises simply the question of execution. Inasmuch, however, as the testimony has indicated and the instrument itself indicates that this entire will, as well as the signature, purports to be in the handwriting of Joseph Holt, the question necessarily is: Was this will, as well as the signature to it, written by him? And, as a necessary sequence, if it was not written by him, either as to the signature or body, it is not his will. If it was written by him and signed by him as his last will and testament,

then it matters not what its contents are, who is benefited by it, or who is deprived of benefit by it. The fact being established that this will is in his handwriting and signed by him, your answer to this first issue would necessarily be "Yes," no matter how you think the will ought to have been drawn, what should have influenced Joseph Holt in drawing his will, or whether or not, in so drawing it, he was properly influenced by considerations for those who would be the natural objects of his bounty.

The controversy hinges, therefore, upon this question as to this issue: Was this will written and signed by Joseph Holt?

260 If this will had been found (when I say "will" I do not mean to indicate that it is a will, for that is a question you are to determine) among the papers of Joseph Holt, that circumstance would lend to the instrument a presumption of genuineness. If it had been enlightened by the testimony of any one of these subscribing witnesses, probably this question would not have been put before you for determination. If any one of these subscribing witnesses—Gen. Grant, who was at the time of this alleged execution and of his alleged attestation President of the United States, or Gen. Sherman, who, I believe, was General of the Army at that time, or his wife—had appeared here, I hardly think you would have any question as to the genuineness of the signature of Joseph Holt. The mere statement under oath of any of these distinguished, reputable people that he or she had seen Joseph Holt sign his name to this paper, or that he or she had had the acknowledgment made to him or her by Joseph Holt that he had signed the paper, would be sufficient to convince your judgment that Joseph Holt had executed it, and it would have been a waste of time and of money probably for the caveators to contend before you that this was not Joseph Holt's handwriting. If any other reputable person had been brought into this court who had been able to testify that he had, although not an attesting witness, seen Joseph Holt sign this paper, or that Joseph Holt had acknowledged his signature to him, the question would have been almost absolutely foreclosed.

The difficulty, however, is this, that these attesting witnesses, whom the caveatees, the propounders of this will, would neces-

261 sarily be obliged to call if alive or if accessible and within the jurisdiction of the court, are all dead, and we are absolutely deprived of all the light which an attesting witness can ordinarily throw about the execution of an instrument which he has attested. The purpose of the law in providing that a will of real estate shall be attested by three or four subscribing witnesses is that, in the matter of the transfer of real estate by will, it shall not be left absolutely and entirely to the signature of the testator, but the testator must attest his signature. He must acknowledge it in the presence of three or four subscribing witnesses in order to obtain the safeguard which their presence and knowledge would throw around the execution, and that those witnesses may come into court and establish the factum of the will.

If we were enlightened in this case as to the source from which this paper emanated just before it reached the office of the register

of wills, doubtless it would throw a great deal of light upon this question. Given the name of the person who deposited that envelope in the letter-box in this city, addressed to the register of wills, the source from which this paper emanated being known, probably the question as to whether this paper was ever among the papers of Joseph Holt or whether it emanated from him would be solved.

The difficulty is that this paper was deposited in the mail by some person who, for some fraudulent purpose of his own, deems it necessary to be quiet, or who is so recreant to duty that he
262 does not come forward and indicate the fact that it was so deposited. Who that person is there is no direct evidence in this case. Who that person may be, it is claimed by counsel for both parties, is indicated by the circumstances of this case. Who that person is you may be able to determine with some degree of probability by the circumstances and evidence that have been laid before you. Measure these circumstances by your experience as men—understanding men—and the motives that ordinarily influence them, and if you do reach a conclusion as to who, in all probability, sent this paper to the office of the register of wills you will, perhaps, have in your hands the key to the entire situation.

Now, the court has granted upon this issue the following instructions at the instance of the caveators—the caveators, you will understand, are the Holt heirs, the next of kin, the blood relations of Joseph Holt, and the caveatees the parties who claim under the will:

"3. The jury are instructed that as to the first issue in this case the burden of proof is upon the proponents of the alleged will"—

That is, the caveatees—

"and unless the jury are satisfied by a fair preponderance of the evidence that the paper-writing in dispute, dated February 7th, 1873, and purporting to be the last will and testament of Joseph Holt, was executed by said Joseph Holt as and for his last will and testament, they will answer the first issue in the negative."

That instruction is not objected to. It is conceded by counsel for the caveatees, the proponents of the will, that that states the law.

That is to say, gentlemen of the jury, it is incumbent upon the parties who produce this will and claim it is genuine to satisfy your minds that it was written and signed by Joseph Holt.

263 Ordinarily, as I have indicated, this would be done by the production of the attesting or subscribing witnesses. Those witnesses being dead, the law permits testimony to be given as to the handwriting of the subscribing witnesses, and where there is an attesting clause to the will and evidence of handwriting, taken in connection with the attesting clause and its statements (such statements being ordinarily these: "Signed, sealed, published, and declared as and for the last will and testament of Joseph Holt in our presence, who, in his presence and in the presence of each other and at his request, have signed our names as witnesses"), the law as-

sumes that the will was duly executed; otherwise these people would not have signed such an attesting clause.

In this case there is no attesting clause, and the counsel for the caveatees, the proponents of the will, offered evidence not only as to the signatures of the witnesses, but also evidence tending to show that the signature of Joseph Holt or J. Holt was genuine, and upon such evidence having been offered and given the court permitted the will to be received and read in evidence. Such evidence made a *prima facie* case of due execution of the will. If no other evidence had been given in the case on the part of the caveators, evidence given to that extent only would have justified and, under the law, compelled the jury to reach the conclusion that this will was duly executed by Joseph Holt, but that was not all. Counsel for the caveatees offered a good deal of additional testimony as to the genuineness of the signature of Joseph Holt. On the other hand,
264 a great deal of evidence has been offered on both sides, opinion evidence of those who claim to have had a knowledge of Joseph Holt's signature, as well as evidence of persons who claim to be experts, as to the genuineness of the handwriting, as to the character of the paper, as to the severance of portions of the paper, as to inks, and so forth; and it is for you to say whether, under this condition of affairs, the *prima facie* case that is made by proof of the handwriting of the attesting witnesses and the opinion of witnesses as to Joseph Holt's signature has been overcome by all the evidence in the case, and whether, upon the whole evidence, you are satisfied that this will was written and signed by the testator, Joseph Holt.

You will readily see that the burden being imposed upon the caveatees to convince your judgment that this will is genuine, and they having assumed to satisfy your judgment, that the evidence given in support of the genuineness of this will and of its due execution must preponderate in favor of the caveatees, must turn the scale in the direction of their contention; otherwise your verdict must be that this is not the will of Joseph Holt—that is to say, you must be satisfied and convinced by the evidence that Joseph Holt executed this paper; otherwise your answer to this first issue must be "No."

The court has granted, at the instance of the caveators, the prayer numbered 8, which I will read to you in this connection:

"8. The jury are instructed to disregard any opinion as to whether Joseph Holt wrote the paper in controversy that may have
265 been expressed by any of the witnesses for the caveators in this case so far as such opinion was based upon anything but the handwriting of the paper. In so far as any such opinion may have been based in whole or in part upon the composition of the paper"—

That means the literary composition, not the mechanical composition—

"or the expressions contained in it, or the legal or literary attainments of said Joseph Holt, they are withdrawn from the consideration of the jury."

That you will understand, gentlemen, to mean that where any witness whom you recall has testified as to the non-genuineness of this paper, who has based his opinion, either wholly or in part, upon the character of the composition or upon any other circumstance than the handwriting alone, you must disregard that opinion, because it is withdrawn from your consideration.

"But all other evidence which has been admitted in this case bearing upon the legal attainments and literary style of said Joseph Holt remains as competent evidence for the consideration of the jury, along with the other evidence in the case bearing upon the question of the genuineness of said paper."

That is to say, from the photograph that you have had of the character and attainments of Judge Holt by the evidence in this case, either by his own letters or by the oral evidence of witnesses, you may judge whether it is likely or not that Joseph Holt would have composed and written the paper in controversy. That evidence is submitted to you for such weight as you may see fit to give it, as is all this opinion evidence of experts and non-experts, as is also the intrinsic evidence of the paper itself, if there is any intrinsic evidence in the paper itself which in your judgment affects the question whether this paper is genuine or not. You are also
266 to consider the circumstance touching the relations of Joseph Holt to all the parties to this controversy, the next of kin, the people of his own blood, and the devisees under this will, up to the time of the date of this will, bearing directly upon this question whether it would be likely that he would have made such a will at that time, and also the subsequent conduct of the testator towards his next of kin or heirs-at-law, and as well towards the beneficiaries under this will, as bearing upon the probability, the likelihood, of his having made such disposition of his estate as is made by this paper in controversy.

If, upon the consideration of all of this evidence, you reach the conclusion that this paper is not established to your satisfaction as the genuine paper of Joseph Holt, your answer to this first issue should be "No." If the evidence positively satisfies you that he did not execute it, your answer should also be "No;" for the question is, Was it executed by him?

If your answer to this first question or issue is "No," that is the disposition of this case, and it would become unnecessary for you to consider any further evidence bearing upon the other issue, for if he did not execute the paper it is perfectly plain that he could not have revoked it, and that is the only remaining and other question in the case. If you conclude that he did not execute the paper, you may conclude, without reference to any further evidence in the case, that he did not revoke it, and your answer to both issues should be "No."

If your answer to this issue, however, should be "Yes;"
267 if you reach the conclusion and your judgment is satisfied that it is the genuine instrument of Joseph Holt, then it becomes necessary for you to inquire what answer you must give to the fourth issue.

The fourth issue, in brief, is simply the inquiry, Has this will been revoked by Joseph Holt?

That inquiry has been divided into two questions. The first is, Has it been revoked by tearing or cutting or burning by the testator with intent to revoke the will, or by any one in his presence and by his direction?

The second inquiry is, If not revoked by such act, has it been revoked by a later will, executed as the law requires such a will should be executed?

Upon the first branch of this question I will read the fourth prayer of the caveatees and the fourth prayer of the caveators.

First, the fourth prayer of the caveatees:

"4. The jury are instructed that they are not at liberty to find that the paper-writing dated the seventh day of February, 1873, if executed by Joseph Holt as his last will and testament, was revoked by him merely from the evidence which said paper-writing exhibits of having been burned, torn, cut, or otherwise mutilated. Before they can find such revocation from the fact of such burning, tearing, cutting, or mutilation they must find from the evidence, first, that such burning, tearing, cutting, or mutilation was done by the said Joseph Holt himself or by his direction, and, secondly, that such burning, tearing, cutting, or mutilation was done by him or in his presence and by his direction or consent for the purpose or with the intent upon his part to revoke the said instrument; and the burden of proof upon each of these propositions is upon the caveators, who must satisfy the jury by a fair preponderance of proof both that such burning, tearing, cutting, or mutilation was done by Joseph Holt or by his direction, and that the same was done with the purpose and intent of revoking said instrument."

No. 4 of the caveators is as follows:

268 "4. As to the question of revocation, the jury have the right to consider such burning and mutilation of the paper-writing in controversy as they may be satisfied from the evidence existed when it reached the office of the register of wills, together with all the evidence in the case tending to show any change occurring after February 7th, 1873, in the relations of the testator either to the persons named as beneficiaries in the alleged will or any of them or to those who would be entitled to his estate under the law if he had died intestate, and if the jury are satisfied from all this evidence taken together that such burning and mutilation was done by Joseph Holt or by his directions, with the intention of revoking the same, then the jury are instructed that they should answer the fourth issue 'Yes.'"

You will perceive, gentlemen of the jury, that you must find from the evidence not only that the tearing, burning, or mutilation of this paper was the act of Joseph Holt or of some one else in his presence and by his direction, but that it was his act with the intention to revoke the instrument.

There is no direct evidence in the case that relates to this particular instrument. No one has been examined who has testified that he or she ever saw this paper before it appeared in the office of the

register of wills. So that your inquiry as to this question must be addressed to the circumstances in evidence. If those circumstances satisfy you that this paper, if genuine, was mutilated, torn, or burned by Joseph Holt, and that it was his act with the intention to revoke it, then your answer to this inquiry should be "Yes."

There is no question but that the instrument is burned. There is no question but that it was torn, and to some extent mutilated, when it reached the office of the register of wills; and upon this inquiry you must take the paper as it was when it reached the office of the register of wills. You can judge of that by the testimony which you have heard.

Upon the question of burning, the slightest burning,
269 coupled with the intent to revoke, is a sufficient act on the part of the testator to accomplish the fact of revocation.

So the presumption would be that, this instrument purporting to be sealed by the testator (although no seal appears upon it), the instrument was sealed. There is no seal upon it. It appears that the portion where the seal might have been, and probably was, has been removed.

While it was not necessary to a testamentary paper of this character that it should bear the seal of the testator, yet if he executed it as a sealed instrument that seal becomes an important feature of the paper itself. If you believe from the evidence that he subsequently tore off that seal with intent to revoke the will, that act would be sufficient to accomplish the act of revocation.

If this paper had been found among the papers of Joseph Holt, and it had come from among his papers in the condition in which you see it today, there would be a clear presumption of law, which would have to be overcome by those who claim under the will, that the act of burning or tearing was done by the testator, and that it was done with the purpose of revoking the will.

But, unfortunately for that theory of the case, this will does not come from among the papers of Joseph Holt, so far as the evidence indicates. Where it comes from you will have to surmise from the evidence and from the inferences to be drawn from that evidence. There is, therefore, no presumption arising out of the fact itself that the paper has been mutilated, burned, or torn that it was
270 the act of Joseph Holt; but you are to take these circumstances in connection with all the evidence and strive to reach a conclusion.

The burden of proof is upon the caveators, who assail this instrument, to satisfy you, if you believe it was genuine, that it has been revoked, and that burden must be borne by them to this extent: that by the preponderance of the evidence they overweigh the other theory and satisfy your minds that the instrument has been so revoked.

If you reach the conclusion that the will was revoked by this act you need not inquire into the other branch of the question, whether the paper was revoked by a subsequent will; but if you are not satisfied by the evidence upon this point that it was revoked by mutilation or burning by the act of the testator with intent to

revoke it, then you will have to go further and inquire whether it has been revoked by a subsequent will.

Upon that point I will simply refer to prayers numbered 7 to 11 of the caveatees, and read them to you:

"7. If the caveators have failed to satisfy the jury, by a fair preponderance of proof, that the burning, tearing, cutting, or other mutilation of the paper-writing dated February 7th, 1873, was done by Joseph Holt or in his presence and by his direction and with the intent to revoke said instrument, then the burden of proof is upon them in this case, under the fourth issue, to satisfy the jury by a fair preponderance of proof that Joseph Holt revoked said instrument by a later will.

"And to entitle themselves in this case to a finding that said paper-writing was wholly revoked by a later will they must satisfy the jury by clear and satisfactory proof that Joseph Holt did execute a later will; that said later will was inconsistent with the paper-writing of February 7th, 1873, and that such later will was either in existence at the time of the death of Joseph Holt or was destroyed accidentally or fraudulently in his lifetime."

"8. If the jury shall believe from the evidence that there was such a later will of Judge Holt, duly executed, and that
271 it was either in existence at the time of his death or was destroyed accidentally or fraudulently in his lifetime, still, unless such later will contained an express revoking clause, of which there is no evidence in this case, it will not justify a finding that the paper-writing of February 7th, 1873, was thereby revoked, except to the extent that the contents of such later will, if there was one, are clearly proved and are shown to be inconsistent with the earlier instrument. Thus, if they should believe from the evidence that there was such a later existing but lost will, and that it differed from the paper-writing of February 7th, 1873, in the disposition of the testator's property, but in what particulars or to what extent it so differed they should be unable from the evidence to determine, this will be insufficient to justify a finding that the said paper-writing of February 7th, 1873, has been revoked."

The evidence, gentlemen of the jury, must be specific to such extent as to indicate inconsistency between the paper in controversy and the alleged later will in the disposition of the entire estate or with reference to some particular portion of the estate.

"9. If, however, the jury should believe from the evidence that there was such a later existing but lost will or will accidentally or fraudulently destroyed in the lifetime of the testator, and that any of its provisions have been clearly proven, which provisions are inconsistent with those of the paper-writing of February 7th, 1873, in part only, as by the gift of any specific property to a person not named in said earlier paper-writing or by the appointment of a different executor, this would be a revocation *pro tanto*, as it is called—that is, a revocation to the extent of such clearly proven and inconsistent provisions only—and their answer to the fourth issue should be so framed accordingly."

That is to say, if you find that the will was not revoked entirely

by making an inconsistent and entirely different provision as to the entire estate, but you do find that there were some inconsistent provisions or dispositions of some part of the estate, or that a different executor was appointed, then this paper in controversy would be revoked to that extent and that extent only.

272 If, however, you find from the evidence that there was such a later will, and that it made a different disposition of the entire estate of the testator, and you believe from the evidence that that will was executed in due form and was attested by the testator in the presence of three or four witnesses, it would be an entire revocation of the paper in controversy.

"10. If the jury shall believe from the evidence that Joseph Holt did execute the paper-writing dated February 7th, 1873, as his last will and testament, and that he afterwards executed a later will, inconsistent with it, which could not be found at the time of his death, the legal presumption is that he himself destroyed such later will, and that he thereby revived the earlier one, unless there was in such later will a clause of express revocation, of which there is no evidence in this case, or unless the jury shall believe from the evidence that the burning, tearing, cutting, or other mutilation of the earlier will was done by the testator, in his presence or by his direction, and with the intent and purpose to revoke it. This presumption that the testator himself destroyed such later will, if there was one, is not conclusive; but it places the burden of proof upon the caveators to satisfy the jury by a fair preponderance of proof that such later will was in existence at the time of the testator's death, or that it was in his lifetime destroyed by fraud or accident."

This presumption is a presumption of law, and, as the instruction indicates, it is not conclusive; it is a legal presumption, I mean. It is not conclusive; it may be overcome by the evidence. The same evidence that satisfies you that such a will did exist may possibly satisfy you that the will was not destroyed by the testator during his lifetime; and in this connection you should take into consideration all the declarations of the testator, especially those made in the latter part of his life, in his last days, that you find have any bearing upon this question to determine whether that presumption, if the will is destroyed, is overcome by this evidence.

273 Prayer numbered 11 granted on behalf of the caveatees is one that bears very remotely upon this question. I will read it, however, because it has been granted:

"11. The jury are instructed that the testimony which has been admitted touching the business transactions and differences between Joseph Holt and the husband of Mrs. Ray is admitted for the purpose solely of tending to prove the intent or purpose with which the paper-writing of February 7th, 1873, was burned, torn, cut, or otherwise mutilated—*i. e.*, whether with the intent or purpose to revoke said paper-writing—in case the jury shall find from the evidence that such burning, tearing, cutting, or other mutilation was done by the testator or in his presence and by his direction. Unless the jury shall find from the evidence that the said burning, tearing, cutting,

or other mutilation was in fact done by the said Joseph Holt or by his direction the testimony in reference to the said Ray transactions and differences is not competent upon any question in this case and should be wholly disregarded."

To that, I understand, there was no objection and no exception.

If you reach the conclusion that this will was genuine and is genuine, and that it has been revoked by obliteration, cancellation, burning, tearing, or act of the testator with intent to revoke, your answer to this fourth issue should be "Yes." If you reach the conclusion that it has been revoked by a later will containing inconsistent provisions and those inconsistent provisions do not go to the extent of the entire estate, then you should indicate by your answer to this issue to what extent the inconsistency goes and to what extent the will is thereby revoked, if you find it is revoked. If you find that the later will covers the entire estate, if there was such a thing as a later will, duly executed, then your answer to this fourth issue should be "Yes." If, however, you do not find that the will
274 was revoked by either of these means and you find that it was genuine, then your answer to this issue should be "No."

There are two additional instructions asked by the caveators, which I will read and then, with a very few words, submit this matter to you.

The first of these is numbered 9:

"9. The jury are instructed that no statement which may have been made by George Johnson to the witness Truesdell as to declarations made by Joseph Holt to said Johnson can be considered by the jury for any purpose except that of affecting the credibility of said Johnson."

The tenth and last instruction is as follows:

"10. The jury are instructed that the question for their determination as to the first issue in this case is whether they are satisfied by a fair preponderance of the evidence that Joseph Holt executed the paper in controversy and not whether, if he did not execute it, by whom it was written; and if the jury are not so satisfied as to the fact of the execution of said paper by said Joseph Holt, they should not be deterred from rendering a verdict accordingly by any effect such verdict may be supposed to have upon any other person. The question whether any person is criminally liable is not involved in this proceeding."

It is your province, gentlemen of the jury, to pass upon the evidence, and it is your duty to base your conclusions absolutely and solely upon the evidence. It is not your province to make a will for Joseph Holt, if in your judgment you should be satisfied that he ought to have made a different will from the will in controversy. It is not your province to unmake a will, unless the evidence is of such character as to satisfy you either that Judge Holt did not execute this paper, or, if he did execute it, that he subsequently revoked it.

In passing upon these questions you should be influenced by
274½ no other motive than the desire to reach the exact truth. Let justice be done, no matter who is injured by your verdict.

You are not responsible for the outcome of this case. It matters not to you, and it should not make any difference as to your conclusions upon the evidence in this case, whether the result will indicate prevarication or perjury on the part of any witness who has been examined in your hearing, whether that witness be high or low socially. It matters not to you, and you should not permit these considerations to influence your judgment to the slightest degree, what may be the subsequent outcome of this case, who will be injured by your verdict, either pecuniarily or who ultimately may be subjected to criminal prosecution. It is not your province to determine, if this will is not genuine, by whom it was forged. Your province is to determine, simply, is it the genuine instrument of Joseph Holt? If it is the genuine instrument of Joseph Holt, then, as I have indicated to you, it is not your business that the devise to these beneficiaries may cut out the next of kin and the blood relations of Joseph Holt.

With the consequences you have nothing to do. Do not permit considerations of expediency or of sympathy for any one to enter into your deliberations. Render your verdict in accordance with the conclusions to which the evidence compels you, and let the consequences of such verdict adjust themselves and rest where they may. Then will your consciences be clear before God and man, and the community should be satisfied with your verdict.

Take the case, gentlemen.

275 Mr. DARLINGTON: Before the jury retire, if the court please, there are some little things, most of which can be readily removed, to which I wish to call attention.

Your honor, after reading the instruction that the burden rested upon the caveatees to satisfy them by a fair preponderance of proof, afterwards used some such language as might be misunderstood as requiring us to satisfy them beyond a doubt. For example, you told them that their judgment must be satisfied and convinced. I only ask your honor to state to them that this does not mean beyond a reasonable doubt, but it does mean by a fair preponderance of the evidence.

The COURT: Gentlemen of the jury, I did not mean to convey any such idea. Those of you who have sat on juries in the criminal court, if any of you have, will be readily aware of the fact that in a criminal prosecution to justify a conviction the jury must be satisfied of guilt beyond a reasonable doubt. But in a civil case a less degree of proof is sufficient—that is, a fair preponderance of the evidence, which, as I have said, is evidence that is sufficient to outweigh the other side.

Mr. DARLINGTON: Then your honor said something about the absence of an attesting clause to this will. We desire to except to so much of the phraseology as indicated that the absence of an attesting clause detracts anything from the proof of the handwriting of the attesting witnesses.

The COURT: I did not mean anything of the kind. I do not see how any one could have so misunderstood me.

Mr. DARLINGTON: When the charge is written up we will
276 see just what you said. That is the way it struck me, and I wish to save the point.

The COURT: If there is any misunderstanding, I want to correct it now. I simply said to the jury, and I think they will recall the fact, that the reason proof of the genuineness of the handwriting of attesting witnesses who are dead or beyond the jurisdiction of the court is received to show the execution of the instrument is the presumption that they would not put their names to an attesting clause and certify to a fact that was not true; that there was no attesting clause in this will, but that, upon proof of the handwriting of these witnesses and proof also of the handwriting of Joseph Holt, the will was admitted in evidence; that upon such proof the caveatees had made out a *prima facie* case, and that proof in the absence of any countervailing proof would be sufficient not only to justify, as I said, but to compel the jury to reach the conclusion that it was a genuine instrument, but that they must consider all the evidence in the case that bears upon that question.

Mr. DARLINGTON: That is satisfactory, and I make no exception to that part of it.

Now, there were three other propositions laid down by the court which I think are covered by the prayers, but to which I wish to except, because in a recent case I was told by the Court of Appeals that because I had not excepted in the charge I waived my earlier exceptions.

Your honor told the jury, as I recorded you: "You may judge from the photograph of the testator's style and literary attainments whether he would have written such a paper as is here."

277 Also that "the subsequent conduct of the testator to his heirs and next of kin might be considered upon the question of whether or not he executed this will originally."

And, in the third place, that "his subsequent conduct towards the beneficiaries under the will might be considered in determining whether he executed the paper originally."

To each of those three propositions I except.

The COURT: Yes; having relation back to that. The first one is not correctly stated.

Mr. DARLINGTON: It may not be.

Mr. WORTHINGTON: Considered with the other circumstances in the case.

The COURT: Undoubtedly. I said that in commenting upon the instruction that had been asked and granted in behalf of the caveators. I said that it was only a circumstance in evidence that the attainments and character of Joseph Holt had been photographed, to a large extent, by his letters that had been read in evidence, and the jury could judge what sort of a man he was, and that by the testimony in that same behalf they could say whether upon that evidence, giving it such weight as they saw fit to give it, together with all the other evidence in the case, it was likely he would have executed this will.

Mr. DARLINGTON: I so understood it, and I desire to reserve an exception.

The next note I have is in reference to one of my own prayers upon the question of revocation. The prayer as you read it states
278 that if the jury find that it was burned or torn by the testator himself or by his direction and *in his presence* that they might consider that revocation.

I do not remember putting the words "*in his presence*" in the prayer, and I did not mean to put them there. I do not know that the law goes quite so far as that.

The COURT: It does. I put that phrase in there because I regarded it as essential under the statute. The instruction was excepted to, and if that were omitted I thought it would be fatal to the instruction.

Mr. DARLINGTON: Your honor told the jury that any burning would be sufficient to revoke. Of course, I know you mean any burning by the testator himself.

The COURT: I did say that.

Mr. DARLINGTON: You did at one place; yes.

Now, here is a point in favor of my friends that I want to make: Your honor told the jury that if they believed there was another will executed, and that it was attested by three or four witnesses, it would be an entire revocation. The law would not require any witnesses, of course, so far as we are concerned here under the Porter decision, as this is only a question of personalty, and whether there were witnesses or not would not, perhaps, be a matter of any consequence.

The COURT: The only provision of the law that relates to revocation of a will by cancellation, or burning, or obliteration, or tearing is the provision that relates to a will of real estate, and the manner in which that will may be revoked by such act is clearly pointed out.

Mr. DARLINGTON: We agree about that, but the point I
279 make is this: Suppose there was a will made giving all his property to A or B, and there were no witnesses to it at all, so far as the personalty is concerned I think I am prepared to concede it would be revocation.

The COURT: So far as the personalty is concerned. But how about the realty?

Mr. DARLINGTON: That is not involved here at all, under the Porter decision, no matter how this case should be decided.

The COURT: I do not know.

Mr. DARLINGTON: That is what the Supreme Court said in the Porter case.

The COURT: I do not think the Supreme Court intended to go to that extent. There was no issue there tried before a jury and sent up from the orphans' court; it was the act of the orphans' court alone in disposing of a will that purported to pass realty. The courts of Maryland are full of cases going back to the earliest days of wills that purport to pass realty, and I do not think it has ever been questioned that where there has been a trial of issues of

this character between the parties that the parties to the issue were absolutely concluded in any subsequent controversy, either at law or in equity.

Mr. DARLINGTON: I think myself there is that distinction; but in order to avoid going to the Supreme Court I am willing——

Mr. WORTHINGTON: He is willing to yield a point.

The COURT: I have no objection.

280 Mr. WORTHINGTON: Then will your honor state to the jury that a revoking will need not have any witnesses in this case?

The COURT: You can eliminate that, gentlemen. If you find that there was a will, you need not inquire whether there were any witnesses to it; but if you find that Joseph Holt left a will disposing of his entire estate, as I have indicated to you, whether it had witnesses or not, it would be a sufficient revocation.

Mr. WORTHINGTON: Or that he made subsequently such a will, which was destroyed by inadvertence or accident.

Mr. DARLINGTON: Yes; destroyed by accident or (otherwise)* inadvertence.†

I note an exception to the portion of the charge where your honor told the jury that the same evidence that the will existed might or may satisfy them that it was not destroyed by the testator.

The COURT: You misunderstood me, Mr. Darlington, absolutely. There is evidence here of conversations by Joseph Holt with Washington Holt, and there are letters—I have not paid very much attention to that feature of the case—which, if I recall them correctly, referred to this matter. I would not pretend to repeat that. It seems to me that if the substance of those letters or of those communications or those declarations indicates the existence of a will at that time, then those declarations, if the jury could so infer from them, might be also evidence that would convince them that that will was not destroyed at that time, and I spoke particularly with reference to such declarations as they may find in the

281 evidence made by Joseph Holt in his last days just before his death. If he spoke then of a will as being in existence the jury might infer from that that that will was then in existence and that it had not been destroyed by him.

Mr. DARLINGTON: I think the last reference to the matter was in May, and he died in August. However, I desire to reserve the point for whatever there is in it.

Mr. WORTHINGTON: There are two or three matters which are perhaps covered by the exceptions to the prayers.

The first one is your honor's instruction that there is a presumption that there was a seal from its being stated in the will that it was "signed and sealed." That is probably covered by the exception to the refusal to grant a prayer which we asked on that subject; but, in order to avoid the difficulty which Mr. Darlington

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[* Word enclosed in parentheses erased by pencil in copy.]
[† In pencil in copy.]

spoke of, we reserve an exception to the giving of the proposition conversely.

The next one is where your honor said that there was no presumption from the burning or mutilation of the paper that it was done by Joseph Holt. That was also probably covered by the prayers, but we desire to reserve an exception to that.

Then in two of the prayers which have been granted and to which we have an exception there is used the phrase "of which there is no evidence in this case." We desire, besides excepting to those instructions, as we have already done, to except specifically to that phrase in each one of those two prayers.

Mr. WILSON: I want to make a suggestion. In the event
282 that the jury should find that the will was not executed by Joseph Holt, of course they would in answer to the first question say "No." Then to the last issue your honor instructed them that in that case they would answer "No" to that.

Now, that might bring embarrassment hereafter, and I suggest that in the event I have stated they answer, "No; because he did not execute it."

Mr. WORTHINGTON: Otherwise your honor will see what difficulty we might have, as it might be held hereafter that we are concluded by such a finding on the last issue, because it would be an absolute finding that there was no revocation.

The COURT: It seems to me the answer would be perfectly consistent, and I do not see how any trouble could arise from it. But, gentlemen of the jury, if you reach the conclusion that you should answer "No" to the first issue, which is, Did he execute this paper? then, as I have already indicated to you, you need not inquire into the evidence on the other question, but will answer that "No," and it is suggested that you answer, "No; because he did not execute it." You can do that.

(And thereupon, at 4.35 o'clock p. m., the jury retired to consider of their verdict.)

283 36″ *Excep.*

Thereupon the caveatees, by their counsel, excepted to the following portion of said charge: "That is to say, from the photograph that you have had of the character and attainments of Judge Holt by the evidence in this cause, either by his own letters or by the oral evidence of witnesses, you may judge whether it is likely or not that Joseph Holt would have composed and written the paper in controversy;" and the said exception was noted at the time upon the minutes of the court.

37″ *Excep.*

Thereupon the caveatees further excepted to that portion of said charge which instructed the jury they were to consider the subsequent conduct of the testator towards his next of kin or heirs-at-law as bearing upon the probability or likelihood of his having made such disposition of his estate as was made by the paper in controversy, and the said exception was noted at the time upon the minutes of the court.

38″ *Excep.*

Thereupon the caveatees further excepted to so much of the said charge as instructed the jury that they should consider the subsequent conduct of the testator towards the devisees under the will as bearing upon the probability or likelihood of his having made such a disposition of his estate as was made by the paper in controversy, and the said exception was noted at the time upon the minutes of the court.

284 And be it further remembered that each and every of the exceptions taken by or on behalf of the caveatees to each of the said separate and several rulings of the court during the trial and each one of said exceptions taken by or on behalf of the caveatees to the granting by the court of each of the prayers granted on behalf of the caveators, and that each of the exceptions taken by counsel for the caveatees to the refusal of the court to grant each of the prayers asked on behalf of the caveatees and which were refused by the court, and that each of the said exceptions taken by or on behalf of the caveatees to the charge of the court to the jury, as hereinbefore set forth, were so taken by counsel for the caveatees then and there, before the jury retired, separately and severally, and said exceptions and each of them were then and there separately and severally duly noted upon the minutes of the justice presiding at the trial, and counsel for the caveatees then and there prayed the court and now pray the court to sign and seal this bill of exceptions, to have the same force and effect as if each of the said exceptions had been separately and severally set forth in a separate bill of exceptions, and the same is accordingly done and this bill of exceptions signed and sealed and made a part of the record in this cause, now for then, this 30th day of June, A. D. 1897.

A. C. BRADLEY, [SEAL.]
Associate Justice.

This bill of exceptions was served on me Sept. 27, 1896.

A. S. WORTHINGTON,
Of Counsel for Caveators.

284½ Filed July 20, 1897.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Will of JOSEPH HOLT, Deceased. No. —, Admr. Doc.

It is hereby stipulated by the parties to the appeal in the above-entitled cause that the foregoing parts of the original proceedings shall constitute the transcript on appeal.

J. M. WILSON,
A. S. WORTHINGTON,
Attorneys for Appellees.
J. J. DARLINGTON,
Att'y for Appellants.

285 In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 284, inclusive, are true copies of originals in cause No. 39648, at law, *In re* estate of Joseph Holt, deceased, as the same remains upon the files and records of said court

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 28 day of July, A. D. 1897.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 712. Josephine H. Throckmorton *et al.*, appellants, *vs.* Washington D. Holt *et al.* Court of Appeals, District of Columbia. Filed Jul 29, 1897. Robert Willett, clerk.

143½ In the Court of Appeals of the District of Columbia.

JOSEPHINE H. THROCKMORTON ET AL., Appellants, *vs.* WASHINGTON D. HOLT ET AL. } No. 712. April Term, 1897.

Stipulation.

It is hereby stipulated between the parties to this cause, by their attorneys, that on the 5th day of October, 1896, an order was passed in the supreme court of the District of Columbia prolonging and extending the April term, 1896, of the circuit court until and including the 4th day of November, 1896, for the purpose of settling the bill of exceptions in the above cause, the said order having by an inadvertence been omitted from the transcript of record filed in this cause.

J. J. DARLINGTON,
Att'y for Appellants.
A. S. WORTHINGTON,
J. M. WILSON,
Att'ys for Caveatees.

Endorsed: Court of Appeals D. C., April term, 1897. No. 712. Josephine H. Throckmorton *et al.*, appellants, *vs.* Washington D. Holt *et al.* Stipulation of counsel as to prolonging term for settling bills of exceptions. Court of Appeals, District of Columbia. Filed Aug't 12, 1897. Robert Willett, clerk.

144 WEDNESDAY, *April 6th, A. D.* 1898.

JOSEPHINE H. THROCKMORTON and LUKE DEVLIN, Appellants, *vs.* WASHINGTON D. HOLT, WILLIAM G. STERETT, MARGARET Bowmer, John W. Holt, Lockie W. Iglehart, Sarah Holt, by John W. Holt, Her Guardian; Robert S. Holt, Thomas Holt, and James Holt. } No. 712.

The argument in the above-entitled cause was commenced by Mr. J. J. Darlington, attorney for the appellants, and was continued by Mr. A. S. Worthington, attorney for the appellees.

THURSDAY, *April 7th, A. D.* 1898.

JOSEPHINE H. THROCKMORTON and LUKE DEVLIN, Appellants, *vs.* WASHINGTON D. HOLT, WILLIAM G. STERETT, MARGARET Bowmer, John W. Holt, Lockie W. Iglehart, Sarah Holt, by John W. Holt, Her Guardian; Robert S. Holt, Thomas Holt, and James Holt. } No. 712.

The argument in the above-entitled cause was continued by Mr. J. M. Wilson, attorney for the appellees, and was concluded by Mr. Wm. G. Johnson, attorney for the appellants.

145 JOSEPHINE H. THROCKMORTON and LUKE DEVLIN, Appellants,
vs.
WASHINGTON D. HOLT, WILLIAM G. STERETT, MARGARET BOWMER, JOHN W. HOLT, LOCKIE W. IGLEHART, SARAH HOLT, by JOHN W. HOLT, Her Guardian; ROBERT S. HOLT, THOMAS HOLT, and JAMES HOLT. } No. 712.

Opinion.

Mr. Justice SHEPARD delivered the opinion of the court:

This is an appeal from a judgment of the supreme court of the District of Columbia, holding sessions for orphans' court business, refusing probate of an instrument offered therefor as the last will of Joseph Holt, deceased.

The said Joseph Holt, who had been a distinguished lawyer and was generally regarded as an accomplished speaker and writer, was born in the State of Kentucky, in 1807. He came to Washington in 1859 to accept the position of Postmaster General in the cabinet of President Buchanan. Later he became Secretary of War in the same cabinet, and remained until the inauguration of President Lincoln. In 1864 he was appointed judge advocate general of the Army of the United States, from which he retired in 1875. He continued to reside in Washington after his retirement. He had been twice married, but had no children. His first wife, Mary Harrison, who died in 1846, was the first cousin of Elizabeth Hynes, one of the legatees of the will offered for probate. In 1850 he married Miss Wickliffe, who died in 1860. She, it appears, was the cousin of the mother of Josephine Holt Throckmorton, the other legatee named in said will. The latter was also the god-daughter of deceased.

He had several brothers and sisters, all of whom predeceased him, leaving children who are the appellees herein. One of these, a citizen of Texas, had been living in the city of Washington for several years before his uncle's decease; others lived in Kentucky, Indiana and Mississippi.

Judge Holt lived alone, attended by several servants, who had been some years in his employ. Immediately after his death, the nephew living in Washington, William G. Sterrett, went to the house with his wife, and, on the next day, was joined by another nephew, Washington Holt, who lived in Kentucky.

Pursuant to directions given them by deceased shortly before his death (as they testified), the servants delivered his private keys to Washington Holt. Search was made by Holt and Sterrett among the papers of deceased in the house for a will. They testify that no will was found, and that the only thing of a testamentary nature discovered was an unsigned memorandum of a bequest of "— dollars" to the Washington Humane Society. This had no date, but must have been made after February 13, 1885, as that is recited therein as the date of the act of Congress incorporating said society.

It appears that deceased had preserved his papers and letters with great apparent care. They were found in packages carefully indorsed, and there was testimony tending to show that in his last years, when his sight was impaired, he could direct his servants where to find a package that he wanted. Memorandum books were found showing careful entries of trips taken and expenses paid, and one contained entries of daily expenditures.

After or during this search for a will, the nephews say that they caused to be burned in the yard, by one of the servants, some old letters to deceased from Washington Holt and his family; and some old newspapers and circulars were burned in the fireplace in one of the rooms of the house.

Some days later, at the request of Washington Holt, the register of wills searched the house carefully, but found no will. An employee of the register's office made a search also without success. He saw the evidence of the burning of papers in the fireplace and yard, and suggested the sealing of all papers, which was done.

146 Deceased had a box in the vault in the National Safe Deposit Company of Washington, in which some papers were kept. The trust officer of that company examined these, and found a will bearing date April 9, 1848, and a memorandum on a rough piece of paper as follows:

"Humane society, $1,500.
Children's hospital, 4,000.
Lodging-house, 1,500.
Emergency hospital and dispensary, 1,500.
Associated charities, 1,500."

No will having been found, on August 17, 1894, Washington Holt, William G. Sterrett and John Holt, filed a petition for letters of administration, which resulted in the appointment of the National Safe Deposit, Savings and Trust Company, of the city of Washington, as administrator.

The paper offered for probate in this case as the last will of Joseph Holt made its appearance in the following manner:

It was received by the register of wills in the morning mail delivery, August 26, 1895, enclosed in an ordinary envelope of "official" size, together with a piece of pasteboard. There was no other enclosure, and nothing to indicate the source from which the document came. The address—"To the register of wills, D. C."—was in large irregular letters, after the form of print, made with pen and ink.

The postmarks on the package indicated that it had been deposited in one of the many mail boxes situated in the northwest quarter of the city of Washington, and had been delivered at the general post-office 6 p. m., August 25, 1895.

The paper, when received, showed signs of mutilation by burning and tearing; the place where the seal would appear, if affixed as indicated in the recital of the next to the last line, was roughly torn away. It purports to have been "signed and sealed" on February 7, 1873. There is no attestation clause before the signature of the three witnesses, Ellen B. E. Sherman, U. S. Grant and W. T. Sher-

man. These follow the name of the testator, with a slight interval between his and the first of them. Ellen B. E. Sherman was the wife of W. T. Sherman, who was then General Commanding the Army of the United States, and U. S. Grant was then President.

The paper was torn nearly, if not entirely, across the page between the signature of the testator and that of the first witness. There was testimony tending to show that the separation was complete; but the weight of the evidence tended to show that it was not entirely separated at one end. A photo-lithographic copy of this will, as it then appeared, is found in the record, which fairly represents its appearance and condition, save in respect of the severance of the paper and the mutilation where the seal is supposed to have been.

(It is here reproduced.)

2932 3

FOLD OUT IS TOO LARGE TO BE FILMED

147 No testimony was produced during the trial tending to shed any light upon the mysterious appearance of this will. All the parties disclaimed any knowledge of its existence until the news of its receipt by the register of wills had been published.

The executor, Luke Devlin, filed his petition to probate the instrument as the last will of the deceased, and for letters testamentary on September 20, 1895. The appellees, as next of kin, filed their caveat October 18, 1895, and answer thereto was filed December 2 by Luke Devlin, the executor, and Misses Elizabeth Hynes and Josephine Holt Throckmorton, the two legatees named in the said will.

On March 20, 1896, the following issues were made up in the orphans' court and transmitted to the special term holding the circuit court for trial by jury:

"1. Was the paper-writing bearing date the seventh day of February, A. D. 1873, which was filed in this court on the 26th day of August, A. D. 1895, executed by the said Joseph Holt as his last will and testament?

"2. Was the execution of said paper-writing procured by fraud exercised and practiced upon said Joseph Holt by any person or persons?

"3. Was the execution of said paper-writing procured by the undue influence of any person or persons?

"4. If the said paper-writing was executed by the said Joseph Holt as his last will and testament, has the same been revoked by said testator?"

The proponents, or caveatees, proved the death of the subscribing witnesses, and then offered testimony tending to establish the genuineness of their signatures as well as that of the testator. Senator John Sherman testified to the genuineness of the signature of his brother, General Sherman; Col. Frederick D. Grant to that of his father, President Grant; and P. Tecumseh Sherman to that of his mother, Mrs. Ellen B. E. Sherman. The latter also testified that Mrs. Sherman usually wrote her name, "Ellen Ewing Sherman;" but that it was her habit to sign legal papers "Ellen B. E. Sherman," as it appears on said will. Henry B. Burnett gave his opinion that the body of the will and the signature of the testator were written by Judge Holt.

The will was then read to the jury. Miss Hynes and Miss Throckmorton each testified that she had not heard of the said will until after its appearance in the office of the register of wills. The executor, Luke Devlin, was then examined, and testified as follows:

"That the said paper-writing was never in his possession, and that he first saw it in the office of the register of wills on the day it had been received there. On cross-examination the said Devlin testified that he knew the said Joseph Holt well since 1862, having been a copyist and messenger at that time in the office of the judge advocate general when said Holt succeeded to that office; that he continued to be employed in said office until 1876, when the said Holt retired therefrom; that he had little communication with him in relation to office matters; that he visited him once or twice at his house; that he was in the habit of meeting him socially at the

residence of Mrs. Throckmorton, Sr., the grandmother of Miss Josephine H. Throckmorton, from 1865 to 1878; that he had not seen Mrs. Throckmorton, Sr., more than four or five times during a period of ten years preceding the receipt of the will at the register's office, and on learning of the existence of the will he had to consult the city directory to ascertain where she then lived; that on
148 the day the will reached the register of wills he received a telephone message from the register, went to his office, and saw the will for the first time; then called on Mrs. Throckmorton, Sr., and on the same day telegraphed Miss Josephine H. Throckmorton of the finding of the will, having first learned the address of her father upon inquiry at the War Department; that he called on several occasions in later years at said Holt's house and was informed by the colored servants that he was out or that he was engaged, and asked witness to call again, the last of these visits being about April 9, 1894, shortly before his death; that he met said Holt outside on several occasions, the last of which was about two years before his death, and conversed with him."

Caveatees then announced that their *prima facie* case was closed counsel for the caveators objected that it was incumbent upon the caveatees to introduce all the testimony essential to the establishment of the will before they should be called upon to reply. The court ruled that because of the fact that there was no attesting clause to the will, it was proper and necessary for the caveatees to offer all the evidence they proposed to offer upon the subject of the genuineness of the signature of Joseph Holt. Caveatees acquiesced in this ruling as within the discretion of the court, and offered a number of witnesses, who testified to familiarity with the handwriting of the testator, and expressed the opinion that he wrote both the body of the will and the signature thereto.

Caveators introduced a number of witnesses, also familiar with testator's handwriting, who testified that in their opinions the will and signature of testator were not genuine.

One witness, who had been a clerk in the War Department for thirty years, expressed the opinion that the signatures of President Grant and General Sherman were not genuine.

Three experts in handwriting expressed the opinion that the signature of Mrs. Sherman was not written by her. These were contradicted by an equal number of experts on behalf of the caveatees. A great many genuine letters and documents written by deceased were read in evidence and exhibited to the jury. Among these was his own will, dated April 9, 1848, and one written by him for Miss Hynes about January 1, 1886.

Testimony was offered by the caveators of declarations made by testator, after the date of the said will, tending to show his feelings, sentiments and conduct in relation to his next of kin and to the father and grandmother of Miss Throckmorton; as well as his intentions in respect of the disposition of his estate. This evidence was all objected to by the caveatees, and exceptions were taken to its admission. Caveatees also introduced evidence tending to show intimate and affectionate relations between the testator and Misses

Hynes and Throckmorton, the legatees. He had made regular gifts of money to the former for years, and in 1884 gave her $10,000 in six per cent. bonds of the District of Columbia.

No evidence having been introduced in support of the second and third issues, relating to the procurement of the execution of the will by fraud and undue influence, the court instructed the jury to return the answer "no" to each.

The jury returned a verdict answering "no" to the enquiry whether the will was executed by Joseph Holt.

To the fourth question, whether Joseph Holt had revoked the said will, if in fact executed, the jury answered "no," because it was not executed.

The findings of the jury were duly certified to the orphans' court, and in accordance therewith, on July 10, 1896, the order was made denying probate.

The leading question in the case arises on the several assignments of error relating to the admission of evidence tending to show the relations of testator, after the date of the will, with his next of kin and the family of one of the legatees, his sentiments and feelings towards them, and his intentions in respect to provisions for them in the disposition of his estate.

As we have seen, evidence introduced without objection tended to show the great and constant affection of the testator for Miss Hynes, whom he had chiefly supported for years. Miss Throckmorton was the testator's god-daughter, her mother was his second wife's cousin, and her father had in youth been his protégé.

The will in controversy divided his entire estate between Miss Hynes and Miss Throckmorton; the share of the latter to be held in trust by her father until she attained the age of twenty-one years.

There was also testimony tending to show that the testator had become alienated from some of his next of kin because they had espoused the cause of the South during the civil war. Letters were also introduced from the testator to two of his brothers and several nieces, written between 1867 and the date of the will, tending to show the existence of affection for and interest in them.

The testimony to which the exceptions apply may be summarized as follows: (1) Correspondence between testator and certain of his next of kin during the years that followed the date of the will, tending to show the existence of an affectionate interest in them. (2) Visits made by testator to Washington Holt at the old family home in Kentucky; his expressions of affection for his nephew and family. (3) Gifts of land adjoining the home of Mrs. Washington Holt; the erection of costly improvements on the old home place, and the further gift to her of $40,000 in Missouri State bonds. (4) Declarations of testator in 1881 showing anger with the Throckmorton family. On one occasion, when asked of them, he said angrily, "I do not know the Throckmortons." (5) Instructions by testator to his servants not to admit the Throckmortons to his house; and his conduct at a levee of President Arthur in refusing to speak to Major Throckmorton and turning his back upon him. (6) Dec-

larations of testator between 1884 and 1893 that he had made Washington Holt his executor; that all he had would be his, and that he would arrange testator's burial; instructions to the servants to turn over his keys to Washington Holt, as he would have charge of his affairs, etc. (7) Some other declarations of similar purport, among them one made in 1893 to one Barclay to the effect that he had made a will and therein given some pictures to Barclay's mother.

149 All of this evidence was offered in support of the issue of forgery as well as of that of revocation, and was objected to on both grounds.

The twelfth and thirteenth prayers of caveatees relating to the bearing of a part of the same on the issue of revocation were excluded:

"12. The jury are instructed that they cannot consider alleged oral declarations of Joseph Holt to the effect that he had made a will creating Washington Holt his executor, or alleged declarations to the effect that Joseph Holt had made a will in Washington Holt's favor as showing or tending to show revocation of any will which the jury may conclude from the testimony was duly executed by the said Joseph Holt prior to such declarations.

"13. The jury are instructed that they cannot consider any letters or writings offered in evidence, not themselves testamentary in character or not being in effect a last will and testament, for the purpose of showing or tending to show revocation of any will which the jury may conclude was duly executed by the said Joseph Holt prior to the date of such letters and writing."

The court granted the following prayer of the caveators applying to the same issue:

"4. As to the question of revocation the jury have the right to consider such burning and mutilation of the paper-writing in controversy as they may be satisfied from the evidence existed when it reached the office of the register of wills, together with all the evidence in the case tending to show any change occurring after February 7th, 1873, in the relations of the testator either to the persons named as beneficiaries in the alleged will or any of them or to those who would be entitled to his estate under the law if he had died intestate, and if the jury are satisfied from all this evidence taken together that such burning and mutilation was done by Joseph Holt or by his directions with the intention of revoking the same, then the jury are instructed that they should answer the fourth issue, 'Yes.'"

Further instructions, prayed by the caveatees, relating to the issue of revocation, by mutilation, and so forth, the burden of proof thereon, and the effect of a subsequent will or paper-writing thereon, were given to the jury.

1. No special instruction relating to the particular bearing of the evidence of declarations and conduct of the testator, upon the question of forgery exclusively, seems to have been prayed for by either party. Because of the omission of the caveatees in this respect, the caveators contend that its effect cannot now be complained of. They

contend that, being clearly admissible as bearing on the revocation of the will by mutilation, it was not the duty of the court to restrict its consideration to that issue, unless called upon by the interested party to do so.

Ordinarily, this would be the correct practice. But it is not necessary to consider whether the circumstances of this case would constitute an exception; because we think it sufficiently appears, from a paragraph of the general charge, taken in connection with the express purposes for which the evidence was offered, that it was intended to bear distinctly also upon the issue of execution.

That paragraph, to which exception was duly taken by the caveatees, reads as follows:

"You are also to consider the circumstance touching the relations of Joseph Holt to all the parties to this controversy, the next of kin, the people of his own blood, and the devisees under this will, up to the time of the date of this will, bearing directly upon this question whether it would be likely that he would have made such a will at that time, and also the subsequent conduct of the testator towards his next of kin or heirs-at-law, and as well towards the beneficiaries under this will, as bearing upon the probability, the likelihood, of his having made such disposition of his estate as is made by this paper in controversy.

"If, upon the consideration of all of this evidence, you reach the conclusion that this paper is not established to your satisfaction as the genuine paper of Joseph Holt, your answer to this first issue should be 'No.' If the evidence positively satisfies you that he did not execute it, your answer should also be 'No;' for the question is, Was it executed by him?"

It is proper to add also, as bearing upon the weight of this evidence with the jury, the following paragraphs from the general charge:

"It is your province, gentlemen of the jury, to pass upon the evidence, and it is your duty to base your conclusions absolutely and solely upon the evidence. It is not your province to make a will for Joseph Holt, if in your judgment you should be satisfied that he ought to have made a different will from the will in controversy. It is not your province to unmake a will, unless the evidence is of such character as to satisfy you either that Judge Holt did not execute this paper, or, if he did execute it, that he subsequently revoked it.

"In passing upon these questions you should be influenced by no other motive than the desire to reach the exact truth. Let justice be done, no matter who is injured by your verdict. You are not responsible for the outcome of this case. It matters not to you, and it should not make any difference as to your conclusions upon the evidence in this case, whether the result will indicate prevarication or perjury on the part of any witness who has been examined in your hearing, whether that witness be high or low socially. It matters not to you, and you should not permit these considerations to influence your judgment to the slightest degree, what may be the subsequent outcome of this case, who will be injured by your

verdict, either pecuniarily or who ultimately may be subjected to criminal prosecution. It is not your province to determine, if this will is not genuine, by whom it was forged. Your province is to determine, simply, is it the genuine instrument of Joseph Holt? If it is the genuine instrument of Joseph Holt, then, as I have indicated to you, it is not your business that the devise to these beneficiaries may cut out the next of kin and the blood relations of Joseph Holt.

"With the consequences you have nothing to do. Do not permit considerations of expediency or of sympathy for any one to enter into your deliberations. Render your verdict in accordance with the conclusions to which the evidence compels you, and let the consequences of such verdict adjust themselves and rest where they may."

2. It seems to us quite clear, both on principle and authority, that this evidence, including the declarations of the testator tending to show, after the date of the will, renewed and increased affection for his next of kin, as well as estrangement from the family of one of the legatees, and an independent provision for the remaining legatee, for whom his affection remained unabated, was competent as tending to maintain the issue of revocation.

If the will had been found among the papers of the testator unmutilated, the evidence would clearly have been incompetent to prove revocation as an independent fact. If it had been there found, in its present condition, the presumption of revocation would at once attach. Coming to light at the time and in the manner in which this paper did, we are not sure but that the same presumption of revocation ought to be indulged.

Certainly it would be more just and more consistent with the reasons for the ordinary presumptions of law, to presume that the paper had remained under the control of the testator and had been spoliated by him, as he had the lawful right to do, rather than by a stranger, who, in suppressing or defacing the will of another, commits a heinous offense. The charge of the court, without expressly declaring the existence of a presumption under the circumstances of this case, nevertheless imposed the burden of proof upon the caveators to show that the acts of spoliation had been committed by the testator with the intention to revoke. The evidence to maintain this burden was necessarily circumstantial.

In consideration, then, of the condition of the will and the manner in which its appearance was made, we cannot escape the conviction that the state of mind of the testator, during the more than twenty years in which the will was subject to his unrestrained control, as indicated by his changes of feeling towards the parties at interest, was a material circumstance to be considered by the jury in determining whether the mutilation was the result of an intent to revoke. Lawyer *v.* Smith, 8 Mich., 411, 423; Patterson *v.* Hickey, 32 Ga., 156, 164; Burge *v.* Hamilton, 72 Ga., 568, 625; Callagan *v.* Burns, 57 Me., 449; Collyer *v.* Collyer, 110 N. Y., 481, 484; McDonald *v.* McDonald, 142 Ind., 55, 81; Miller *v.* Phillips, 9 R. I., 141, 144; *In re* Valentine's will, 93 Wis., 45, 55; Pickens *v.* Davis, 134 Mass.,

252; Sugden *v.* Lord St. Leonards, L. R. 1 Prob. Div., 154, 176, 219, 225, 232, 241; Gould *v.* Lakes, L. R. 6 Prob. Div., 1, 5.

3. This brings us to the consideration of the important question that has been chiefly argued by counsel, namely, whether the foregoing evidence was competent for the consideration of the jury in determining the issue joined on the genuineness of the will.

In that consideration, it must be remembered that the subscribing witnesses had long been dead; that the genuineness of their signatures had been supported and attacked by competent and respectable evidence in the nature of opinions; and that whilst many witnesses had expressed opinions in favor of the genuineness of the will and the testator's signature thereto, many others of equal credibility, apparently, and opportunities to know the handwriting of the deceased testator, had pronounced against both as forgeries. In addition, we have the mysterious, unexplained deposit of the instrument in one of the public mailing boxes. The jury were required to find if Joseph Holt actually wrote this will and affixed his signature thereto.

The contention of the appellants is supported by the citation of many cases denying the competency of such evidence, especially the subseqent declarations of the testator, on that issue.

The rationale of decision in a considerable number of these might, probably, be reconciled with the decision of competency under the exceptional circumstances of this case; but it would serve no useful purpose to occupy time with their review and the discussion of their respective weight. As the question is one of first impression in this jurisdiction, we are free to adopt the conclusion that seems to us to be the most reasonable, and that accords with the smaller number of cases relied on by the appellees. In one of these, whose analogy is striking, the court of appeals of Maryland, after much consideration of the principles involved, as well as the authorities, declared the evidence competent. Hoppe *v.* Byers, 60 Md., 381, 390. See also the charge of Mr. Justice Grier to the jury in Turner *v.* Hand, 3 Wall., Jr., 88, 92; Stevens' Dig. Evidence, art. 29.

We do not mean to say that such evidence would be competent to establish the execution and existence of an undiscovered will, any more than to prove the revocation of one actually produced without sign of spoliation; for that would be, in either case, to override the provisions of the statute law prescribing the formalities of execution and revocation. Nor would the same evidence be of sufficient weight to warrant the overthrow of a formal will produced and with execution proved by living witnesses of unimpeached credibility.

In fact, it was said in Hoppe *v.* Byers, *supra*, that under circumstances like those just mentioned, the evidence ought to be excluded. But, whether, in such event, the objection would lie to its competency or its credibility, the evidence would have so little weight that, if admitted, the court might properly charge the jury that it could not afford support for a verdict against the will. The difficulty in the accurate reproduction of oral declarations, as well as the danger of the jury being biased or prejudiced thereby, and therefore misled, seem to constitute the chief grounds of objection

to the competency of this kind of evidence; but the same dangers lurk, though in less degree, in all oral evidence of declarations, admissions and confessions of parties against their own interests. In respect of this, we concur in the views expressed by Mr. Justice Lumpkin, in Patterson *v.* Hickey, 32 Ga., 164, as follows: "It is said that the reason for not hearing parol proof is, that there is not the ordinary security that it is true. This goes to the weight of the evidence. It is true, there are many cases in which it would be entitled to but little weight; nay, but a few in which it would be entitled to any. Yet, if there be others, in which it would subserve the cause of truth and justice, it must be heard, leaving its
151 effect to those whose province it is to weigh it. There is little danger in this, when the courts can aid the jury in pointing out its legitimate tendency."

Because, too, one who has executed and delivered a deed or a bond cannot, by subsequent declarations, impeach its execution and obligation, it has been said, in many of the cases, that the same principle applies in the case of a will. In this we cannot entirely concur. In the case of the delivered deed and bond the interest of the signer becomes wholly changed, and he cannot be heard to disparage the title of the other party by declarations in his own interest. But the will is a radically different instrument; it is not made effective by delivery; it is ambulatory, and can take effect only upon the death of the testator; until then only is it beyond his power of recall by destruction, express revocation, or complete substitution by one of later date. By virtue of the statutory requirements in these respects, declarations before, at the time of, or subsequent to, the transaction enquired of, cannot be received as sufficient to establish the same; nor should they be permitted to override positive, unimpeached proof of execution or revocation in accordance with the required formalities. But in a case where such proof is lacking, or where, by competent evidence, the genuineness of the signature has been assailed to such an extent as to require the submission of the question of its forgery to the jury, we think the feelings of the testator towards all the parties, and his relations with them and apparent intentions as disclosed by his conduct and declarations, are competent for their consideration. We agree with the court of appeals of Maryland, that "they are not to be taken as direct proof to establish the paper (or to destroy it), but merely as corroborative of such direct proof, or as a circumstance in a case of this character, where such direct evidence has been first given, proper for the consideration of the jury." 60 Md., 393.

Substantially the same views were expressed by Mr. Justice Grier, who presided in the circuit court on a trial involving the same will that was in controversy in the case greatly relied on by appellants. Boylan *v.* Meeker, 28 N. J. Law, 274. He said, in charging the jury (Turner *v.* Hand, 3 Wall., Jr., 88):

"While it is undoubtedly true that parol declarations of a testator made before or after executing his will ought not to be received as a ground for altering or annulling it, yet cases *may* arise where such declarations, in connection with other circumstances, may be taken

into consideration, as, for example, where there is strong evidence of conspiracy and of fraud practiced on the testator, or that the instrument is forged and false.

"In order to elucidate this principle let us suppose a case. A will is produced in court, regularly proved according to law, yet notwithstanding the legal proof it may possibly never have been seen by the testator, never have been signed and sealed by him, and consequently does not contain his will as to the disposition of his property. Suppose it to have been made (as has sometimes been the case in Ireland and other places) by some person personating the testator, and simple and perhaps honest people have thus been prevailed upon to attest it. In such a case the signatures may be so palpably a forgery as at once to detect the fraud to any judge of handwriting. Again, suppose the will disinherits a child, a grandchild, or other relative, who has been the favored and beloved companion of the testator's life, whom he had uniformly pointed out and always and invariably, through his whole life, declared his intention of making his heir, and in whose favor a prior will was duly executed. Suppose the devisee in this supposed will was some worthless fellow, unknown to the testator, or, if known, despised or abhorred by him. Suppose the witnesses to be of the same character, low and degraded, with whom the testator never associated. Would not such facts, if clearly proved, condemn such instrument in the mind of every rational man? Would not the moral impossibility that the testator could ever have made such a disposition of his property be sufficient to outweigh the positive testimony of such witnesses?

"It is easy to forge the handwriting of almost any man so that it may be almost impossible for the best judges to discriminate between the false and the true, and it is too true that persons may be found willing, for a sufficient consideration, to swear to any statement of facts. Fraud can be generally proved only by circumstantial evidence. A number of distinct facts, clearly proved, may be so utterly inconsistent with the truth of the instrument as most satisfactorily to establish the fraud. The fact that the testator had uniformly, through his whole life, declared that he intended a certain relative to be his heir, that he made his will in his favor, may be an important link in the chain of circumstances from which fraud, perjury, conspiracy, and forgery may be clearly proved."

See also remarks of Jessol, M. R., on the competency of declarations in general, in Sugden *v.* Lord St. Leonards, L. R. 1 P. D., at page 241.

Again, we are unable to perceive a distinction in principle between the competency of declarations in a case like this where the fact of execution is in question, and in one where the will is assailed as the product of fraud and undue influence. In the latter case, the authorities generally concur in holding that the declarations of the testator and his relations with the parties are competent circumstances tending to throw light upon his state of mind and disposition. The only limitation is, that it shall not be received as proof of the independent fact or the truth of the things declared, but as

suppletory only to direct proof of the alleged fraud and undue influence. Some of these cases show the admission of such declarations upon very slight foundation of the direct proof first required. Stephenson *v.* Stephenson, 62 Iowa, 163; Lane *v.* Moore, 151 Mass., 87 (gift by endorsement and delivery of note). See also Parsons *v.* Parsons, 66 Iowa, 754, 758; Woodbury *v.* Woodbury, 141 Mass., 329, 334.

The question at issue in each class of cases is practically the same: Did the testator execute the paper of his own accord? Did he execute it at all? And the danger that the jury answering either question may give undue weight to the declarations and conduct of the testator is equal. All that the court can do, under
152 the circumstances, is to caution the jury against such conduct, as was done in this case, and to set aside the verdict when convinced that the caution was unheeded.

In the peculiar conditions of this case, it seems to us that any evidence from which it might be inferred that the testator would, or would not, have made such a will, would be a material aid in resolving the doubt created by the other evidence whether he did or did not write and sign it. If the proponents had produced a witness of undoubted veracity and disinterestedness, who could testify to declarations of the testator referring to and certainly identifying this particular will as having been written, signed and witnessed, as it appears to be, would not its reception and consideration have been in accord with the dictates of reason and justice?

In order to prevent injustice, courts have even permitted the declarations of the testator to be given as suppletory proof of legal execution where a subscribing witness has either forgotten the facts stated in the attestation, or testified in denial of the same (will of Cottrell, 95 N. Y., 329, 337; Beadles *v.* Alexander, 9 Baxter, 604); and also where it appeared doubtful if the formalities of the law had been complied with in the execution of a codicil. Adams *v.* Norris, 23 How., 353, 368.

Why, then, for the same reason, should not testimony be received from which the jury might, in case of doubt, infer that the testator had not written or executed the instrument at all? Would it not be important to know the character and state of mind of the testator in such a case? If a man of education and character, was he in a condition, mental or otherwise, to induce him to dissemble his affections and feelings for the parties or any one of them? Was there any cause or reason why he should falsely express his affections or dislikes, or should undertake to create hopes and expectations in the minds of his next of kin that he knew would be cruelly disappointed by the production of this will made years before? In short, what was the real state of the testator's mind and feelings before, at and after the alleged date of the execution, in relation to his property and the conflicting objects of his bounty?

The materiality of this inquiry, under the circumstances surrounding this will, seems plain to us.

The length of time of the declarations after the date borne by the instrument is of no materiality; for if the instrument be a forgery,

the person procuring it would naturally give it a date when the disposition would seem more reasonable or more in accord with the testator's sentiments than at a later period; besides it would be a reasonable precaution to antedate a well-known change therein.

4. It follows from what we have heretofore said, that testator's declarations tending to show the making of a will in Washington Holt's favor, or appointing him his executor, were not competent to prove the execution of such a will either as a disposition of the estate or as a distinct revocation of the will offered for probate. They were admissible, and seem to have been admitted, only as one among other circumstances tending to show the state of mind of the testator and shed light upon the issue of revocation, by mutilation, of the will offered for probate; and as such we have held them admissible on the issue in respect of forgery also. The court gave a number of instructions asked by the caveatees respecting the effect of the proof of a supposed later will, and none seem to have been prayed by the caveators. Had the twelfth and thirteenth prayers of the caveatees been modified so as to thus limit the weight or effect of this evidence of a different will, it would have been the duty of the court to grant them. If, however, palpable error had been committed in this respect, the judgment would not be reversed, because it stands upon the verdict finding the will to be a forgery. Having so found, the jury could only answer the remaining question as they did—not revoked because never executed.

5. The next question arises on exceptions taken to the action of the court in permitting witnesses for the caveators to express opinions, founded upon their knowledge of the legal attainments and literary culture and style of the testator, that the will had not been written by him; and also in excluding like evidence when offered in rebuttal by caveatees.

Many genuine letters and documents of the deceased were in evidence for the consideration of the jury. Evidence was also given showing peculiarities of testator in the matter of punctuation.

Among the witnesses who expressed opinions against the genuineness of the will and signature of the testator were several who said, in addition, that they had the same opinion because of the style of the composition. One testified that this was the chief ground of her opinion.

Two of them, officers who had served with the testator in the office of the judge advocate and were familiar with his handwriting, testified to the depth of his legal learning and the excellence of his English composition. One of these said of him: "He had the clearest power of expression and was the finest rhetorician witness had ever met." Both criticised the word "inherit" as used inartificially in the will, and one of them said he did not think the testator would so use the expression.

Attention has been directed, on the argument, to the words following the recital of the name of the executor, Luke Devlin: "Whose character I believe to be of the highest standard;" but we do not find that any witness referred to them.

In the course of their rebuttal, the caveatees proved by John A.

Bingham, long and intimate acquaintance with the testator and familiarity with his handwriting, style of composition and general attainments. But the court refused to permit him to express an opinion in favor of the genuineness of the will and signature, formed upon either or both grounds.

It will be remembered that when caveatees first closed their case they were admonished by the court that the rule in respect of rebuttal evidence would be rigidly enforced; and that they thereupon withdrew the announcement and examined a number of witnesses whose opinions were that the will and signature of testator were genuine. It does not appear that there was any reason why this witness could not have been called on the matter of the handwriting simply, in the opening.

153 (1) Questions in respect of the order of the introduction of evidence are matters of such broad discretion with the trial courts that its exercise will not be disturbed except when abused. Lansburgh *v.* Wimsatt, 7 App. D. C., 271, 276; Olmstead *v.* Webb, 5 App. D. C., 38, 57; First Unitarian Church Soc. *v.* Faulkner, 91 U. S., 415, 418.

(2) If there was error in refusing to permit evidence by this witness in rebuttal of the opinions founded on the testator's style of composition, it was cured by the subsequent action of the court.

For the same reason, it is not necessary to determine whether the opinions of witnesses concerning the genuinenesss of a writing are admissible when founded wholly or in part upon their knowledge of the technical learning, culture and literary style of the alleged writer.

It appears that when the case was closed, the court instructed the jury to disregard all opinions as to the falsity of the papers, founded "either wholly or in part upon the character of the composition, or upon any other circumstance than the handwriting alone."

We are not prepared to admit as clear, that evidence of opinion in respect of the authorship of a paper-writing by a competent judge familiar with the learning, culture and literary style of the alleged writer, is not equally competent and credible with that based solely upon knowledge of handwriting. But, conceding its incompetency, the error was corrected by the charge withdrawing it from the consideration of the jury. This rule of practice is well settled in the courts of the United States if not elsewhere. Pennsylvania Co. *v.* Ray, 102 U. S., 451, 458.

It is only in a clearly exceptional case that error will be considered when assigned on the admission of incompetent evidence that has subsequently been withdrawn from consideration by the charge of the court. Hopt. *v.* Utah, 120 U. S., 430, 438; Waldron *v.* Waldron, 156 U. S., 361, 383. Those exceptional conditions are not found here.

6. The last exception, upon which error has been assigned, also relates to the exclusion of evidence offered by caveatees in rebuttal.

In opening their case, they offered P. Tecumseh Sherman as a witness, and he expressed the opinion that the signature of his mother, Mrs. Ellen B. E. Sherman, was genuine. He was not called

upon to give an opinion as to the genuineness of the signature of his father, General W. T. Sherman. That was proved by Senator John Sherman.

Caveators introduced a witness, John B. Randolph, who testified that he had been employed for more than thirty years in the office of the Secretary of War, during which time U. S. Grant and W. T. Sherman had each acted as Secretary of War, and the latter had been General of the Army. During this service he had become familiar with their signatures, and had recently re-examined them. In his opinion neither signature attached to the will was genuine. On cross-examination, among other specifications of peculiarities in the genuine signature of General Sherman, he said that, "in the long quirl to the capital T the upper and lower lines met," and that he had "never seen one in which they had not met." Subsequently he said that "in four out of five" genuine signatures observed by him, the upper and lower lines of this "quirl" met. (They do not meet in the signature attached to this will; see copy.) He also thought the loop in the S was larger than usual.

Caveatees, in rebuttal, offered to prove by the witness, P. Tecumseh Sherman, that this failure of the lines to meet was "by no means an unusual feature in the signature of General Sherman, and that it is frequently, if not habitually, found therein;" and also that loops at the bottom of the S as large as that in the signature to the will were also usually found. The court excluded this evidence, on the objection of caveators that it was not competent rebuttal.

Referring again to the express and timely notice heretofore mentioned as given by the court as regards the order to be observed in the introduction of the evidence of handwriting, which was acquiesced in by the caveatees, and considering the fact that this witness, though examined in the opening, had not been asked a question concerning this signature, we think it was within the discretion of the court to exclude his testimony.

We have had some doubt whether that part of it referring to manner of making the "quirl" was not admissible as tending to rebut that part of the witness Randolph's testimony. Had Mr. Randolph testified that the peculiarity mentioned by him invariably appeared in the genuine signature of General Sherman; or had the witness offered in rebuttal examined the signatures of General Sherman in the office of the Secretary of War and been prepared to state that they did not show the peculiarity mentioned by Randolph, the evidence would have been competent in rebuttal.

But Randolph did not say that this was invariable. He gave the proportion of its occurrence as about "four out of five." This might have been true as regards the signatures examined by him, and not true of those most familiar to the son of General Sherman.

What the latter proposed to state was that this continuous opening between the lines was not an unusual feature of the signatures familiar to him. What the former had said was, that, in the proportion of four to one, the signatures with which he was familiar did not show this continuous opening, and it does not appear that

it was proposed to contradict this statement directly by the evidence offered in rebuttal.

Whilst inclined to the opinion that the discretion of the court might well have been liberally exercised in favor of the admission of this evidence, we do not think that its exclusion, considering, too, the indirect and slight contradiction between it and the evidence of Randolph, was an error for which the judgment should be reversed.

We are of the opinion that the judgment should be affirmed, with costs; and it is so ordered. *Affirmed.*

154 TUESDAY, *May 3d, A. D.* 1898.

JOSEPHINE H. THROCKMORTON and LUKE Devlin, Appellants, *vs.* WASHINGTON D. HOLT, WILLIAM G. STERETT, Margaret Bowmer, John W. Holt, Lockie W. Iglehart, Sarah Holt, by John W. Holt, Her Guardian; Robert S. Holt, Thomas Holt, and James Holt.	No. 712, April Term, 1898.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE SHEPARD.

May 3, 1898.

155 FRIDAY, *May 13th, A. D.* 1898.

JOSEPHINE H. THROCKMORTON and LUKE DEVLIN, Appellants, *vs.* WASHINGTON D. HOLT, WILLIAM G. STERETT, MARGARET Bowmer, John W. Holt, Lockie W. Iglehart, Sarah Holt, by John W. Holt, Her Guardian; Robert S. Holt, Thomas Holt, and James Holt.	No. 712.

On motion of Mr. William G. Johnson, attorney for the appellants in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving a supersedeas bond in the sum of ten thousand dollars.

156 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before

you or some of you, between Josephine H. Throckmorton and Luke Devlin, appellants, and Washington D. Holt, William G. Sterett, Margaret Bowmer, John W. Holt, Lockie W. Iglehart, Sarah Holt, by John W. Holt, her guardian; Robert S. Holt, Thomas Holt, and James Holt, appellees, a manifest error hath happened, to the great damage of the said appellants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal Court of Appeals, District of Columbia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

157 *Bond.*

Know all men by these presents that we, Josephine H. Throckmorton, of the city of New York, State of New York, as principal, and the Fidelity and Deposit Company of Maryland, a corporation of the State of Maryland, having its principal office at the city of Baltimore, in said State, and having fully complied with the requirements of chapter 282 of the Revised Statutes of the United States, entitled "An act relative to recognizances, stipulations, bonds, and undertakings, and to allow certain corporations to be accepted as surety thereon," passed August 13th, 1894, as surety, are held and firmly bound unto Washington D. Holt, William G. Sterett, Margaret Bowmer, John W. Holt, Lockie W. Iglehart, Sarah Holt, John W. Holt, her guardian; Robert S. Holt, Thomas Holt, and James Holt in the full and just sum of ten thousand dollars ($10,000), to be paid to the said Washington D. Holt, William G. Sterett, Margaret Bowmer, John W. Holt, Lockie W. Iglehart, Sarah Holt, John W. Holt, her guardian; Robert S. Holt, Thomas Holt, and James Holt, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals. Dated this fourth day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between the said Josephine H.

Throckmorton and Luke Devlin and the said Washington D. Holt William G. Sterett, Margaret Bowmer, John W. Holt, Lockie W Iglehart, Sarah Holt, John W. Holt, her guardian; Robert S. Holt Thomas Holt, and James Holt, a judgment was rendered against the said Josephine H. Throckmorton and Luke Devlin, appellants therein, and the said Josephine H. Throckmorton and Luke Devlin having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said Washington D. Holt, William G. Sterett, Margaret Bowmer, John W. Holt, Lockie W.
158 Iglehart, Sarah Holt, John W. Holt, her guardian; Robert S. Holt, Thomas Holt, and James Holt, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Josephine H. Throckmorton shall prosecute said writ of error to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

JOSEPHINE H. THROCKMORTON.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND.
HENRY B. PLATT, *Vice-President.*

Attest:
[SEAL.] JOHN W. WOOTEN, *Attorney.*

STATE OF NEW YORK, *County of New York,* } ss:

On this 4th day of June, 1898, before me personally appeared Josephine H. Throckmorton, to me known and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged to me that she executed the same.

[SEAL.] AUGUSTUS LEE, JR.,
Notary Public, County of New York.

Approved by—
R. H. ALVEY,
Chief Justice.

159 COUNTY AND STATE OF NEW YORK, ss:

On the fourth day of June, in the year 1898, before me personally came Henry B. Platt, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he was the vice-president of the Fidelity and Deposit Company of Maryland, the corporation named in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and the said Henry B. Platt further said that he was acquainted with John W. Wooten and knew him to be the attorney of said company; that the signa-

ture of the said John W. Wooten subscribed to the said instrument was in the genuine handwriting of the said John W. Wooten, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Henry B. Platt.

[SEAL.] AUGUSTUS LEE, JR.,
Notary Public, New York County.

STATE OF NEW YORK, *County of New York*, } ss:

I, William Sohmer, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify that Augustus Lee, Jr., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such proof or acknowledgment a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 4 day of June, 1898.

[SEAL.] WM. SOHMER, *Clerk.*

At a regular meeting of the board of directors of the Fidelity and Deposit Company of Maryland, held at the office of the company, in the city of Baltimore, State of Maryland, on the 5th day of May, 1897, at which was present a quorum of said directors, duly authorized to act in the premises, on motion, it was unanimously—

"Resolved, That in pursuance of section eight hundred and eleven (811) of the Code of Civil Procedure of the State of New York, Henry B. Platt, vice-president, or John W. Wooten, attorney, or Frank H. Platt, Theodore F. Wood, Edward T. Platt, and Cyrus S. Sedgwick, attorneys-in-fact of this company in the State of New York, be, and each of them is, hereby authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for or on behalf of this company, and to attach thereto the seal of the corporation, the same to be attested by the said John W. Wooten, attorney of the company, or by either one of the other persons above named, as occasion may require."

COUNTY AND STATE OF NEW YORK, ss:

I, John W. Wooten, attorney of the Fidelity and Deposit Company of Maryland, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do hereby certify that the same is a true and correct transcript therefrom and of the whole of the said original resolution.

Given under my hand and seal of the company, at the city of New York, this fourth day of June, 1898.

[SEAL.] JOHN W. WOOTEN, *Attorney.*

Fidelity and Deposit Company of Maryland.

Statement, December 31st, 1897.

Resources.		Liabilities.	
Real estate	$600,000 00	Capital stock	$1,000,000 00
Stocks and bonds	1,610,800 00	Surplus	1,000,000 00
Premiums due by agents, less commission	101,136 77	Reserve	435,089 02
Cash in bank, etc.	188,587 56	Claims in process of adjustment	7,829 78
		Claims reported: proof not filed	20,507 71
		Undivided profits	37,097 15
	$2,500,524 33		$2,500,524 33

COUNTY AND STATE OF NEW YORK, *ss:*

John W. Wooten, being duly sworn, says that he is the attorney of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said company as of December 31st, 1897, to the best of his knowledge and belief, and that the financial condition of said company is as favorable now as it was when such statement was made.

JOHN W. WOOTEN.

Subscribed and sworn to before me this 4th day of June, 1898.

[SEAL.] AUGUSTUS LEE, JR.,
Notary Public, New York County.

[Endorsed:] No. 712. Josephine H. Throckmorton and Luke Devlin *vs.* Washington D. Holt, William G. Sterett, and others. Bond on writ of error to Sup. Ct. U. S. Court of Appeals, District of Columbia. Filed Jun- 7, 1898. Robert Willett, clerk.

160 UNITED STATES OF AMERICA, *ss:*

To Washington D. Holt, William G. Sterett, Margaret Bowmer, John W. Holt, Lockie W. Iglehart, Sarah Holt, by John W. Holt, her guardian; Robert S. Holt, Thomas Holt, and James Holt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Josephine H. Throckmorton and Luke Devlin are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this seventh day of

June, in the year of our Lord one thousand eight hundred and ninety-eight.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted June 7, 1898.
A. S. WORTHINGTON,
J. M. WILSON,
Att'ys for Def'ts in Error.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jun-7, 1898. Robert Willett, clerk.

161 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 160, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Josephine H. Throckmorton and Luke Devlin, appellants, *vs.* Washington D. Holt, William G. Sterett, Margaret Bowmer, John W. Holt, Lockie W. Iglehart, Sarah Holt, by John W. Holt, her guardian; Robert S. Holt, Thomas Holt, and James Holt, No. 712, April term, 1898, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 24th day of June, A. D. 1898.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

162 In the Supreme Court of the United States, October Term, 1899.

JOSEPHINE HOLT THROCKMORTON ET AL., Plaintiffs in Error,
vs.
WASHINGTON HOLT ET AL., Defendants in Error.
} No. 103.

Stipulation.

Counsel for plaintiffs in error and defendants in error stipulate as follows:

That there has been inadvertently omitted from the record and should appear therein on page forty-seven, after the will of Joseph Holt, dated April 9, 1848, that said will when given in evidence at the trial was enclosed in a paper wrapper, which was also given in evidence and which bore the following endorsement:

"Will of J. Holt. This will has been wholly revoked. J. Holt,"

the said endorsement being in the handwriting of said Joseph Holt.

It is also agreed that this stipulation be annexed to and printed with the record in this cause and constitute a part thereof.

J. J. DARLINGTON,
WM. G. JOHNSON,
Counsel for Plaintiffs in Error.
A. S. WORTHINGTON,
J. M. WILSON,
Counsel Counsel *for Defendants in Error.*

163 [Endorsed:] File No., 16,930. Supreme Court U. S., October term, 1899. Term No., 103. Josephine H. Throckmorton *et al.*, P. E., *vs.* Washington D. Holt *et al.* Stipulation to correct record. Filed October 13, 1899.

Endorsed on cover: Case No. 16,930. District of Columbia Court of Appeals. Term No., 103. Josephine H. Throckmorton and Luke Devlin, plaintiffs in error, *vs.* Washington D. Holt, William G. Sterett, Margaret Bowmer, *et al.* Filed July 11th, 1898.